Title 44

STATE GOVERNMENT—LEGISLATIVE

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Chapter 44.04 RCW
GENERAL PROVISIONS

Sections

44.04.100 Contest of election—Depositions.
44.04.120 Members' allowances when engaged in legislative business.
44.04.280 State laws—Respectful language.

44.04.100 Contest of election—Depositions. Any person desiring to contest the election of any member of the legislature, may, at any time after the presumptive election of such member and before the convening of the ensuing regular session of the legislature, have the testimony of witnesses, to be used in support of such contest, taken and perpetuated, by serving not less than three days' written notice upon the member whose election he or she desires to contest, of his or her intention to institute such contest and that he or she desires to take the testimony of certain witnesses named in such notice, at a time and place named therein, before a notary public duly commissioned and qualified and residing in the county where the presumptive member resides, giving the name of such notary public, which deposition shall be taken in the manner provided by law for the taking of depositions in civil actions in the superior court. The presumptive member of the legislature, whose election is to be contested, shall have the right to appear, in person or by counsel, at the time and place named in the notice, and cross examine any witness produced and have such cross examination made a part of such deposition, and to produce witnesses and have their depositions taken for the purpose of sustaining his or her election. The notary public before whom such deposition is taken shall transmit such depositions to the presiding officer of the senate, or house of representatives, as the case may be, in which said contest is to be instituted, in the care of the secretary of state, at the state capitol, by registered mail, and it shall be the duty of the secretary of state upon the convening of the legislature to transmit said depositions, unopened, to the presiding officer of the senate, or the house of representatives, as the case may be, to whom it is addressed, and in case such contest is instituted said depositions may be opened and read in evidence in the manner provided by law for the opening and introduction of depositions in civil actions in the superior court. [2009 c 549 § 6001; 1927 c 205 § 1; RRS § 8162-1. Prior: Code 1881 §§ 3125-3139.]

Contest of elections: Chapter 29A.68 RCW.

Depositions: ***Rules of court:*** *CR 26 through 37.*

Legislature to judge election and qualifications of members: State Constitution Art. 2 § 8.

Recall: State Constitution Art. 1 §§ 33, 34, chapter 29A.56 RCW.

44.04.120 Members' allowances when engaged in legislative business. Each member of the senate or house of representatives when serving on official legislative business shall be entitled to receive, in lieu of per diem or any other payment, for each day or major portion thereof in which he or she is actually engaged in legislative business or business of the committee, commission, or council, notwithstanding any laws to the contrary, an allowance in an amount fixed by the secretary of the senate and chief clerk of the house, respectively, in accordance with applicable rules and resolutions of each body. Such allowance shall be reasonably calculated to reimburse expenses, exclusive of mileage, which are ordinary and necessary in the conduct of legislative business, recognizing cost variances which are encountered in different locales. The allowance authorized shall not exceed the greater of forty-four dollars per day or the maximum daily amount determined under RCW 43.03.050, as now or hereafter amended. In addition, a mileage allowance shall be paid at the rate per mile provided for in RCW 43.03.060, as now or hereafter amended, when authorized by the house, committee, commission, or council of which he or she is a member and on the business of which he or she is engaged. [2009 c 549 § 6002; 1985 c 3 § 1; 1979 ex.s. c 255 § 3; 1974 ex.s. c 157 § 2; 1973 1st ex.s. c 197 § 5; 1967 ex.s. c 112 § 4; 1963 ex.s. c 7 § 1; 1959 ex.s. c 10 § 1.]

Effective date—1979 ex.s. c 255: See note following RCW 43.03.010.

44.04.280 State laws—Respectful language. (1) The legislature recognizes that language used in reference to individuals with disabilities shapes and reflects society's attitudes towards people with disabilities. Many of the terms currently used diminish the humanity and natural condition of having a disability. Certain terms are demeaning and create an invisible barrier to inclusion as equal community members. The legislature finds it necessary to clarify preferred language for new and revised laws by requiring the use of terminology that puts the person before the disability.

(2)(a) The code reviser is directed to avoid all references to: Disabled, developmentally disabled, mentally disabled, mentally ill, mentally retarded, handicapped, cripple, and crippled, in any new statute, memorial, or resolution, and to change such references in any existing statute, memorial, or resolution as sections including these references are otherwise amended by law.

(b) The code reviser is directed to replace terms referenced in (a) of this subsection as appropriate with the following revised terminology: "Individuals with disabilities," "individuals with developmental disabilities," "individuals with mental illness," and "individuals with intellectual disabilities."

(3) No statute, memorial, or resolution is invalid because it does not comply with this section. [2009 c 377 § 1; 2004 c 175 § 1.]

Chapter 44.16 RCW
LEGISLATIVE INQUIRY

Sections

44.16.010 Examination of witnesses—Compulsory process.
44.16.030 Chair to administer oaths.
44.16.040 Commission to examine absent witness.
44.16.070 Oath and powers of commissioner.
44.16.080 Examination to be private.
44.16.090 Testimony reduced to writing.
44.16.100 Return of depositions.
44.16.120 Punishment of recalcitrant witness.
44.16.140 Refusal to testify—Contempt.
44.16.160 Warrant of imprisonment.
44.16.170 Record of proceedings.

44.16.010 Examination of witnesses—Compulsory process. Every chair or presiding member of any committee of either the senate or house of representatives, or any joint committee of the senate or house of representatives, which, by the terms of its appointment, shall be authorized to send for persons and papers, shall have power, under the direction of such committee, to issue compulsory process for the attendance of any witness within the state whom the committee may wish to examine. [2009 c 549 § 6003; 1895 c 6 § 1; RRS § 8178.]

44.16.030 Chair to administer oaths. The chair or presiding member of any committee of either the senate, house of representatives, or any joint committee thereof, shall be authorized to administer oaths to all witnesses coming before such committee for examination; and all witnesses who shall testify in any proceeding provided for in this chapter, shall be under oath or affirmation. [2009 c 549 § 6004; 1895 c 6 § 2; RRS § 8179.]

44.16.040 Commission to examine absent witness. Every such chair or presiding member shall also have power, under the direction of the committee, to issue a commission for the examination of any witness who shall be without the jurisdiction of the state, or if within the state, shall be unable to attend, or who shall, for any reasons, be excused by the committee from attendance. [2009 c 549 § 6005; 1895 c 6 § 3; RRS § 8180.]

44.16.070 Oath and powers of commissioner. The person to whom such commission shall be directed, if he or she reside within the state and accept the trust, shall, before entering upon the execution of his or her duties, take the oath of office prescribed in the Constitution. Such commissioner shall have power to issue process to compel the attendance of witnesses, whom he or she shall be required to examine, and shall have power to administer oaths to such witnesses. [2009 c 549 § 6006; 1895 c 6 § 6; RRS § 8183.]

44.16.080 Examination to be private. Unless otherwise directed by the committee, it shall in all cases be the duty of the commissioner to examine, in private, every witness attending before him or her, and not to make public the particulars of such examination, when so made in private, until the same shall be made public by order of the house or legislature appointing the committee. [2009 c 549 § 6007; 1895 c 6 § 7; RRS § 8184.]

44.16.090 Testimony reduced to writing. Every witness so attending shall be examined on oath or affirmation, and his or her testimony shall be reduced to writing by the commissioner, or by some disinterested person in his or her presence and under the direction of said commissioner, and signed by the witness. [2009 c 549 § 6008; 1895 c 6 § 8; RRS § 8185.]

44.16.100 Return of depositions. When a commission shall have been duly executed, the commissioner shall annex thereto the depositions of the witnesses, duly certified by him or her, and shall, without delay, transmit the same by mail, inclosed and under seal, or deliver the same, to the chair of the committee by which the commission shall have been issued, or to such person as by the committee directed. [2009 c 549 § 6009; 1895 c 6 § 9; RRS § 8186.]

44.16.120 Punishment of recalcitrant witness. Any person who shall fail to attend as a witness upon any committee appointed by either the house or senate of the state of Washington, or both, after having been duly subpoenaed as provided in this chapter, or who, being in attendance as a witness before such committee, shall refuse to answer any question or produce any paper or document or book which he or she is required to answer or to produce by such committee, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not exceeding five hundred dollars, or by imprisonment in the county jail for a term not longer than six months, or by both such fine and imprisonment. [2009 c 549 § 6010; 1897 c 33 § 1; RRS § 8194.]

Witness refusing to attend legislature or committee or to testify: RCW 9.55.020.

44.16.140 Refusal to testify—Contempt. A person who, being present before either house of the legislature, or any committee or joint committee thereof, or commissioner authorized to summon witnesses, wilfully refuses to be sworn or affirmed, or to answer any material and proper question, or to produce, upon reasonable notice, any material and proper books, papers or documents in his or her possession or under his or her control, shall be punished as for contempt, as hereinafter provided. [2009 c 549 § 6011; 1895 c 6 § 12; RRS § 8189.]

44.16.160 Warrant of imprisonment. If any fine is imposed against any person for contempt, as hereinbefore provided, he or she shall stand committed to the county jail of the county in which the offense was committed until such fine is paid. The presiding officer of the house, fixing the fine, shall issue a warrant to the sheriff of the county where the offense was committed, commanding him or her to imprison such person in the county jail until such fine is paid, or until he or she has been imprisoned in such jail one day for every three dollars of such fine. [2009 c 549 § 6012; 1895 c 6 § 14; RRS § 8191.]

44.16.170 Record of proceedings. Every such committee shall keep a record of its proceedings under the provisions of this chapter, which record shall be signed by the chair or presiding officer of the committee, and the same returned to

the legislative body by which the committee was appointed, as a part of the report of such committee. [2009 c 549 § 6013; 1895 c 6 § 16; RRS § 8193.]

Chapter 44.20 RCW
SESSION LAWS

Sections

44.20.060 Duty of code reviser in arranging laws.

44.20.060 Duty of code reviser in arranging laws. In arranging the laws, memorials and resolutions for publication, the code reviser is hereby authorized to make such corrections in the orthography, clerical errors and punctuation of the same as in his or her judgment shall be deemed essential: PROVIDED, That when any words or clauses shall be inserted, the same shall be inclosed in brackets; and no correction shall be made which changes the intent or meaning of any sentence, section or act of the legislature. [2009 c 549 § 6014; 1969 c 6 § 5; 1890 p 632 § 8; RRS § 8203.]

Chapter 44.39 RCW
JOINT COMMITTEE ON ENERGY SUPPLY AND ENERGY CONSERVATION

Sections

44.39.050 Payment of expenses—Vouchers.
44.39.060 Examinations—Subpoenas—Depositions—Contempt proceedings—Witness fees.

44.39.050 Payment of expenses—Vouchers. All expenses incurred by the committee, including salaries and expenses of employees, shall be paid upon voucher forms as provided by the director of financial management and signed by the chair of the committee. Vouchers may be drawn upon funds appropriated generally by the legislature for legislative expenses or upon any special appropriation which may be provided by the legislature for the expenses of the committee. [2009 c 549 § 6015; 1979 c 151 § 156; 1969 ex.s. c 260 § 9.]

44.39.060 Examinations—Subpoenas—Depositions—Contempt proceedings—Witness fees. In the discharge of any duty imposed by this chapter, the committee or any personnel acting under its direction shall have the authority to examine and inspect all properties, equipment, facilities, files, records, and accounts of any state office, department, institution, board, committee, commission, or agency; to administer oaths; and to issue subpoenas, upon approval of a majority of the members of the house or senate rules committee, to compel the attendance of witnesses and the production of any papers, books, accounts, documents, and testimony, and to cause the deposition of witnesses, either residing within or without the state, to be taken in the manner prescribed by law for taking depositions in civil actions in the superior courts.

In case of the failure of any person to comply with any subpoena issued in behalf of the committee, or on the refusal of any witness to testify to any matters regarding which he or she may be lawfully interrogated, it shall be the duty of the superior court of any county, or of the judge thereof, on application of the committee, to compel obedience by proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein.

Each witness who appears before the committee by its order, other than a state official or employee, shall receive for his attendance the fees and mileage provided for witnesses in civil cases in courts of record, which shall be audited and paid upon the presentation of proper vouchers signed by such witness and approved by the chair of the committee. [2009 c 549 § 6016; 1977 ex.s. c 328 § 17.]

Severability—1977 ex.s. c 328: See note following RCW 43.21G.010.

Chapter 44.48 RCW
LEGISLATIVE EVALUATION AND ACCOUNTABILITY PROGRAM COMMITTEE

Sections

44.48.050 Expenses of committee—Vouchers.
44.48.060 Officers and rules.
44.48.110 Witness fees and mileage.

44.48.050 Expenses of committee—Vouchers. Subject to RCW 44.04.260, all expenses incurred by the committee, including salaries and expenses of employees, shall be paid upon voucher forms as provided by the administrator and signed by the chair or vice chair of the committee and attested by the secretary of said committee, and the authority of said chair and secretary to sign vouchers shall continue until their successors are selected after each ensuing session of the legislature. Vouchers may be drawn on funds appropriated by law for the committee: PROVIDED, That the senate and the house may authorize the committee to draw on funds appropriated by the legislature for legislative expenses. [2009 c 549 § 6017; 2001 c 259 § 13; 1977 ex.s. c 373 § 5.]

44.48.060 Officers and rules. The committee shall have the power and duty to appoint its own chair, vice chair, and other officers; and to make rules for orderly procedure. [2009 c 549 § 6018; 1977 ex.s. c 373 § 6.]

44.48.110 Witness fees and mileage. Each person who appears before the committee, other than a state official or employee, may upon request receive for attendance the fees and mileage provided for witnesses in civil cases in courts of record in accordance with the provisions of RCW 2.40.010, which shall be audited and paid upon the presentation of proper vouchers signed by such person and approved by the secretary and chair of the committee. [2009 c 549 § 6019; 1977 ex.s. c 373 § 11.]

Chapter 44.73 RCW
LEGISLATIVE GIFT CENTER

Sections

44.73.015 Legislative gift center—Selling wine for off-premises consumption—Collection and remittance of all applicable state and local taxes—Consultation with the Washington wine commission.

44.73.015 Legislative gift center—Selling wine for off-premises consumption—Collection and remittance of all applicable state and local taxes—Consultation with the Washington wine commission. (1) The legislative gift center is authorized to sell at retail for off-premises consumption wine produced in Washington by a licensed domestic winery. Wine sold by the legislative gift center must: (a) Be sold to individuals twenty-one years of age or older; (b) be sold for personal use and not for resale; and (c) have been purchased from a licensed wine distributor or from a manufacturer authorized to distribute wine of its own production.

(2) The legislative gift center must collect and remit to the department of revenue all applicable state and local taxes on sales of wine.

(3) The legislative gift center must consult with the Washington wine commission to select which Washington wines will be sold. The Washington wine commission must give consideration to award winning wines in assisting the gift center. [2009 c 228 § 3.]

Findings—Intent—2009 c 228: See note following RCW 66.12.195.

Title 46

MOTOR VEHICLES

Chapters

46.01 Department of licensing.
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46.09 Off-road and nonhighway vehicles.
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Chapter 46.01 RCW

DEPARTMENT OF LICENSING

Sections

46.01.130 Powers and duties of department and director—Personnel screening, appointment of county auditors as agents.
46.01.260 Destruction of records by director.

46.01.130 Powers and duties of department and director—Personnel screening, appointment of county auditors as agents. (1) The department of licensing shall have the general supervision and control of the issuing of vehicle licenses and vehicle license number plates and shall have the full power to do all things necessary and proper to carry out the provisions of the law relating to the licensing of vehicles; the director shall have the power to appoint and employ deputies, assistants and representatives, and such clerks as may be required from time to time, and to provide for their operation in different parts of the state, and the director shall have the power to appoint the county auditors of the several counties as the director's agents for the licensing of vehicles.

(2)(a) The director shall investigate the conviction records and pending charges of any current employee of or prospective employee being considered for any position with the department that has or will have:

(i) The ability to create or modify records of applicants for enhanced drivers' licenses and identicards issued under RCW 46.20.202; and

(ii) The ability to issue enhanced drivers' licenses and identicards under RCW 46.20.202.

(b) The investigation consists of a background check as authorized under RCW 10.97.050, 43.43.833, and 43.43.834, and the federal bureau of investigation. The background check must be conducted through the Washington state patrol criminal identification section and may include a national check from the federal bureau of investigation, which is through the submission of fingerprints. The director shall use the information solely to determine the character, suitability, and competence of current or prospective employees subject to this section.

(c) The director shall investigate the conviction records and pending charges of an employee subject to this subsection every five years.

(d) Criminal justice agencies shall provide the director with information that they may possess and that the director may require solely to determine the employment suitability of current or prospective employees subject to this section. [2009 c 169 § 1; 1979 c 158 § 121; 1973 c 103 § 2; 1971 ex.s. c 231 § 8; 1965 c 156 § 13; 1961 c 12 § 46.08.090. Prior: 1937 c 188 § 26; RRS § 6312-26; prior: 1921 c 96 § 3, part; 1917 c 155 § 2, part; 1915 c 142 § 3, part. Formerly RCW 46.08.090.]

Severability—1973 c 103: "If any provision of this 1973 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1973 c 103 § 9.]

Effective date—1971 ex.s. c 231: "(1) Sections 1 through 7 of this 1971 amendatory act shall take effect on January 1, 1972.

(2) Sections 8 through 23 of this 1971 amendatory act shall take effect on January 1, 1973." [1971 ex.s. c 231 § 24.]

46.01.260 Destruction of records by director. (1) Except as provided in subsection (2) of this section, the director, in his or her discretion, may destroy applications for vehicle licenses, copies of vehicle licenses issued, applications for drivers' licenses, copies of issued drivers' licenses, certificates of title and registration or other documents, records or supporting papers on file in his or her office which have been microfilmed or photographed or are more than five years old.

If the applications for vehicle licenses are renewal applications, the director may destroy such applications when the computer record thereof has been updated.

(2)(a) The director shall not destroy records of convictions or adjudications of RCW 46.61.502, 46.61.504, 46.61.520, and 46.61.522, or records of deferred prosecutions granted under RCW 10.05.120 and shall maintain such records permanently on file.

(b) The director shall not, within fifteen years from the date of conviction or adjudication, destroy records if the offense was originally charged as one of the offenses designated in (a) of this subsection, convictions or adjudications of the following offenses: RCW 46.61.500 or 46.61.5249 or any other violation that was originally charged as one of the offenses designated in (a) of this subsection.

(c) For purposes of RCW 46.52.101 and 46.52.130, offenses subject to this subsection shall be considered "alcohol-related" offenses. [2009 c 276 § 2; 1999 c 86 § 2; 1998 c 207 § 3; 1997 c 66 § 11; 1996 c 199 § 4; 1994 c 275 § 14; 1984 c 241 § 1; 1971 ex.s. c 22 § 1; 1965 ex.s. c 170 § 45; 1961 c 12 § 46.08.120. Prior: 1955 c 76 § 1; 1951 c 241 § 1; 1937 c 188 § 77; RRS § 6312-77. Formerly RCW 46.08.120.]

Effective date—1998 c 207: See note following RCW 46.61.5055.

Severability—1996 c 199: See note following RCW 9.94A.505.

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

Chapter 46.04 RCW
DEFINITIONS

Sections

46.04.126 Collector vehicle.
46.04.304 Moped.
46.04.330 Motorcycle.
46.04.336 Motorized foot scooter.
46.04.900 Construction—Title applicable to state registered domestic partnerships—2009 c 521. *(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*

46.04.126 Collector vehicle. "Collector vehicle" means any motor vehicle that is more than thirty years old. [2009 c 142 § 2.]

46.04.304 Moped. "Moped" means a motorized device designed to travel with not more than three wheels in contact with the ground and having an electric or a liquid fuel motor with a cylinder displacement not exceeding fifty cubic centimeters which produces no more than two gross brake horsepower (developed by a prime mover, as measured by a brake applied to the driving shaft) that is capable of propelling the device at not more than thirty miles per hour on level ground. [2009 c 275 § 1; 1990 c 250 § 18; 1987 c 330 § 702; 1979 ex.s. c 213 § 1.]

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

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

46.04.330 Motorcycle. "Motorcycle" means a motor vehicle designed to travel on not more than three wheels in contact with the ground, on which the driver:

(1) Rides on a seat or saddle and the motor vehicle is designed to be steered with a handlebar; or

(2) Rides on a seat in a partially or completely enclosed seating area that is equipped with safety belts and the motor vehicle is designed to be steered with a steering wheel.

"Motorcycle" excludes a farm tractor, a power wheelchair, an electric personal assistive mobility device, a motorized foot scooter, an electric-assisted bicycle, and a moped. [2009 c 275 § 2; 2003 c 141 § 3; 2002 c 247 § 3; 1990 c 250 § 20; 1979 ex.s. c 213 § 2; 1961 c 12 § 46.04.330. Prior: 1959 c 49 § 34; prior: (i) 1943 c 153 § 1, part; 1937 c 188 § 1, part; Rem. Supp. 1943 § 6312-1, part; 1923 c 181 § 1, part; 1921 c 96 § 2, part; 1919 c 59 § 1, part; 1917 c 155 § 1, part; 1915 c 142 § 2, part; RRS § 6313, part. (ii) 1937 c 189 § 1, part; RRS § 6360-1, part; 1929 c 180 § 1, part; 1927 c 309 § 2, part; RRS § 6362-2, part.]

Legislative review—2002 c 247: See note following RCW 46.04.1695.

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

46.04.336 Motorized foot scooter. "Motorized foot scooter" means a device with no more than two ten-inch or smaller diameter wheels that has handlebars, is designed to be stood upon by the operator, and is powered by an internal combustion engine or electric motor that is capable of propelling the device with or without human propulsion at a speed no more than twenty miles per hour on level ground.

For purposes of this section, a motor-driven cycle, a moped, an electric-assisted bicycle, or a motorcycle is not a motorized foot scooter. [2009 c 275 § 3; 2003 c 353 § 6.]

Effective date—2003 c 353: See note following RCW 46.04.320.

46.04.900 Construction—Title applicable to state registered domestic partnerships—2009 c 521. ***(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*** For the purposes of this title, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 112.]

Chapter 46.09 RCW
OFF-ROAD AND NONHIGHWAY VEHICLES

Sections

46.09.170 Refunds from motor vehicle fund—Distribution—Use.

46.09.170 Refunds from motor vehicle fund—Distribution—Use. (1) From time to time, but at least once each year, the state treasurer shall refund from the motor vehicle fund one percent of the motor vehicle fuel tax revenues col-

lected under chapter 82.36 RCW, based on a tax rate of: (a) Nineteen cents per gallon of motor vehicle fuel from July 1, 2003, through June 30, 2005; (b) twenty cents per gallon of motor vehicle fuel from July 1, 2005, through June 30, 2007; (c) twenty-one cents per gallon of motor vehicle fuel from July 1, 2007, through June 30, 2009; (d) twenty-two cents per gallon of motor vehicle fuel from July 1, 2009, through June 30, 2011; and (e) twenty-three cents per gallon of motor vehicle fuel beginning July 1, 2011, and thereafter, less proper deductions for refunds and costs of collection as provided in RCW 46.68.090.

(2) The treasurer shall place these funds in the general fund as follows:

(a) Thirty-six percent shall be credited to the ORV and nonhighway vehicle account and administered by the department of natural resources solely for acquisition, planning, development, maintenance, and management of ORV, nonmotorized, and nonhighway road recreation facilities, and information programs and maintenance of nonhighway roads;

(b) Three and one-half percent shall be credited to the ORV and nonhighway vehicle account and administered by the department of fish and wildlife solely for the acquisition, planning, development, maintenance, and management of ORV, nonmotorized, and nonhighway road recreation facilities and the maintenance of nonhighway roads;

(c) Two percent shall be credited to the ORV and nonhighway vehicle account and administered by the parks and recreation commission solely for the acquisition, planning, development, maintenance, and management of ORV, nonmotorized, and nonhighway road recreation facilities; and

(d) Fifty-eight and one-half percent shall be credited to the nonhighway and off-road vehicle activities program account to be administered by the board for planning, acquisition, development, maintenance, and management of ORV, nonmotorized, and nonhighway road recreation facilities and for education, information, and law enforcement programs. The funds under this subsection shall be expended in accordance with the following limitations:

(i) Not more than thirty percent may be expended for education, information, and law enforcement programs under this chapter;

(ii) Not less than seventy percent may be expended for ORV, nonmotorized, and nonhighway road recreation facilities. Except as provided in (d)(iii) of this subsection, of this amount:

(A) Not less than thirty percent, together with the funds the board receives under RCW 46.09.110, may be expended for ORV recreation facilities;

(B) Not less than thirty percent may be expended for nonmotorized recreation facilities. Funds expended under this subsection (2)(d)(ii)(B) shall be known as Ira Spring outdoor recreation facilities funds; and

(C) Not less than thirty percent may be expended for nonhighway road recreation facilities;

(iii) The board may waive the minimum percentage cited in (d)(ii) of this subsection due to insufficient requests for funds or projects that score low in the board's project evaluation. Funds remaining after such a waiver must be allocated in accordance with board policy.

(3) On a yearly basis an agency may not, except as provided in RCW 46.09.110, expend more than ten percent of the funds it receives under this chapter for general administration expenses incurred in carrying out this chapter.

(4) During the 2009-2011 fiscal biennium, the legislature may appropriate such amounts as reflect the excess fund balance in the NOVA account to the department of natural resources to install consistent off-road vehicle signage at department-managed recreation sites, and to implement the recreation opportunities on department-managed lands in the Reiter block and Ahtanum state forest, and to the state parks and recreation commission for maintenance and operation of parks and to improve accessibility for boaters and off-road vehicle users. This appropriation is not required to follow the specific distribution specified in subsection (2) of this section. [2009 c 564 § 944; 2009 c 187 § 2. Prior: 2007 c 522 § 953; 2007 c 241 § 16; 2004 c 105 § 6; (2004 c 105 § 5 expired June 30, 2005); prior: (2003 1st sp.s. c 26 § 920 expired June 30, 2005); 2003 1st sp.s. c 25 § 922; 2003 c 361 § 407; 1995 c 166 § 9; 1994 c 264 § 36; 1990 c 42 § 115; 1988 c 36 § 25; 1986 c 206 § 8; 1979 c 158 § 130; 1977 ex.s. c 220 § 14; 1975 1st ex.s. c 34 § 1; 1974 ex.s. c 144 § 3; 1972 ex.s. c 153 § 15; 1971 ex.s. c 47 § 22.]

Reviser's note: This section was reenacted by 2009 c 187 § 2 and amended by 2009 c 564 § 944, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2009 c 564: See note following RCW 2.68.020.

Severability—Effective date—2007 c 522: See notes following RCW 15.64.050.

Intent—Effective date—2007 c 241: See notes following RCW 79A.25.005.

Expiration dates—Effective dates—2004 c 105 §§ 3-6: See note following RCW 46.09.130.

Expiration date—Severability—Effective dates—2003 1st sp.s. c 26: See notes following RCW 43.135.045.

Severability—Effective date—2003 1st sp.s. c 25: See note following RCW 19.28.351.

Findings—Part headings not law—Severability—2003 c 361: See notes following RCW 82.36.025.

Effective dates—2003 c 361: See note following RCW 82.08.020.

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

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

Effective date—1975 1st ex.s. c 34: "This 1975 amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1975." [1975 1st ex.s. c 34 § 4.]

Purpose—1972 ex.s. c 153: See RCW 79A.35.070.

Chapter 46.12 RCW

CERTIFICATES OF OWNERSHIP AND REGISTRATION

Sections

46.12.295 Repealed.
46.12.440 Kit vehicles—Application for certificate of ownership.

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

46.12.440 Kit vehicles—Application for certificate of ownership. The following procedures must be followed when applying for a certificate of ownership for a kit vehicle:

(1) The vehicle identification number (VIN) of a new vehicle kit and of a body kit will be taken from the manufacturer's certificate of origin belonging to that vehicle. If the VIN is not available, the Washington state patrol shall assign a VIN at the time of inspection.

(2) The department shall use the model year of a manufactured new vehicle kit and manufactured body kit as the year reflected on the manufacturer's certificate of origin.

(3) The make shall be listed as "KITV," and the series and body designation must describe a discrete vehicle model.

(4) Except for kit vehicles licensed under RCW 46.16.680(5), kit vehicles must comply with chapter 204-10 WAC. A kit vehicle is exempt from the welding requirements under WAC 204-10-022(8) if, upon application for a certificate of ownership, the owner furnishes documentation from the manufacturer of the vehicle frame that informs the owner that the welding on the frame was not completed by a certified welder and that the structural strength of the frame has not been certified by an engineer as meeting the applicable federal motor vehicle safety standards set under 49 C.F.R. Sec. 571.201, 571.214, 571.216, and 571.220 through 571.224, and the applicable SAE standards.

(5) The application for the certificate of ownership must be accompanied by the following documents:

(a) For a manufactured new vehicle kit, the manufacturer's certificate of origin or equivalent document;

(b)(i) For a manufactured body kit, the manufacturer's certificate of origin or equivalent document; (ii) for the frame, the title or a certified copy or equivalent document;

(c) Bills of sale or invoices for all major components used in the construction of the vehicle. The bills of sale must be notarized unless the vendor is registered with the department of revenue for the collection of retail sales or use tax. The bills of sale must include the names and addresses of the seller and purchaser, a description of the vehicle or part being sold, including the make, model, and identification or serial number, the date of sale, and the purchase price of the vehicle or part;

(d) A statement as defined in WAC 308-56A-150 by an authorized inspector of the Washington state patrol or other person authorized by the department of licensing verifying the vehicle identification number, and year and make when applicable;

(e) A completed declaration of value form (TD 420-737) to determine the value for excise tax if the purchase cost and year is unknown or incomplete.

(6) A Washington state patrol VIN inspector must ensure that all parts are documented by titles, notarized bills of sale, or business receipts such as obtained from a wrecking yard purchase. The bills of sale must contain the VIN of the vehicle the parts came from, or the yard number if from a wrecking yard.

(7) The department may not deny a certificate of ownership to an applicant who completes the requisite application, complies with this section, and pays the requisite titling fees and taxes. [2009 c 284 § 1; 1996 c 225 § 8.]

Finding—1996 c 225: See note following RCW 46.04.125.

Chapter 46.16 RCW
VEHICLE LICENSES

Sections

46.16.006 "Registration year" defined—Registration months—"Last day of the month" defined.
46.16.076 Voluntary, opt-out donation—State parks renewal and stewardship account.
46.16.162 Farm vehicle trip permits.
46.16.615 Commercial motor vehicle registration.
46.16.680 Kit vehicles.
46.16.685 License plate technology account.
46.16.725 Board—Powers and duties—Moratorium on issuance of special plates.

46.16.006 "Registration year" defined—Registration months—"Last day of the month" defined. (1) The term "registration year" for the purposes of chapters 46.16, 82.44, and 82.50 RCW means the effective period of a vehicle license issued by the department. Such year commences at 12:01 a.m. on the date of the calendar year designated by the department and ends at 12:01 a.m. on the same date of the next succeeding calendar year.

(a) If a vehicle license previously issued in this state has expired and is renewed with a different registered owner, a new registration year is deemed to commence upon the date the expired license is renewed in order that the renewed license be useable for a full twelve-month period.

(b) A new registration year is deemed to commence upon the date the expired license is renewed in order that the renewed license be useable for a full twelve months when the registered owner:

(i) Is a member of the United States armed forces;

(ii) Was stationed outside of Washington under military orders during the prior vehicle registration year; and

(iii) Provides the department a copy of the military orders.

(2) Each registration year may be divided into twelve registration months. Each registration month commences on the day numerically corresponding to the day of the calendar month on which the registration year begins, and terminates on the numerically corresponding day of the next succeeding calendar month.

(3) Where the term "last day of the month" is used in chapters 46.16, 82.44, and 82.50 RCW in lieu of a specified day of any calendar month it means the last day of such calendar month or months irrespective of the numerical designation of that day.

(4) If the final day of a registration year or month falls on a Saturday, Sunday, or legal holiday, such period extends through the end of the next business day. [2009 c 159 § 1; 1992 c 222 § 1; 1983 c 27 § 1; 1981 c 214 § 1; 1975 1st ex.s. c 118 § 1.]

Effective date—1975 1st ex.s. c 118: "This 1975 amendatory act shall take effect on January 1, 1977: PROVIDED, That the director of the department of motor vehicles may, prior to such effective date, undertake and perform duties and conduct activities necessary for the timely implementation of this 1975 amendatory act on such date." [1975 1st ex.s. c 118 § 19.]

Severability—1975 1st ex.s. c 118: "If any provision of this 1975 amendatory act is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of this 1975 amendatory act and the applicability thereof to persons and circumstances shall not be affected thereby." [1975 1st ex.s. c 118 § 18.]

46.16.076 Voluntary, opt-out donation—State parks renewal and stewardship account. (1)(a) Except as otherwise provided in this section, the department shall collect from the owners of vehicles registered under RCW 46.16.0621 and vehicles licensed under RCW 46.16.070 with a declared gross weight of ten thousand pounds or less a voluntary donation of five dollars at the time of initial or renewal registration. The donation must be deposited in the state parks renewal and stewardship account established in RCW 79A.05.215 to be used for the operation and maintenance of state parks.

(b) The donation required under this section may not be collected from any vehicle owner actively opting not to participate in the donation program. The department shall ensure that the opt-out donation under this section shall be clear, visible, and prominently displayed in both paper and online vehicle registration renewals. Notification of intent to not participate in the donation program must be provided annually at the time of vehicle registration renewal.

(2) This section applies to registrations due or to become due on or after September 1, 2009. [2009 c 512 § 1; 2007 c 340 § 1.]

46.16.162 Farm vehicle trip permits. (1) The owner of a farm vehicle licensed under RCW 46.16.090 purchasing a monthly license under RCW 46.16.135 may, as an alternative to the first partial month of the license registration, secure and operate the vehicle under authority of a farm vehicle trip permit issued by this state. The licensed gross weight may not exceed eighty thousand pounds for a combination of vehicles nor forty thousand pounds for a single unit vehicle with three or more axles.

(2) If a monthly license previously issued has expired, the owner of a farm vehicle may, as an alternative to purchasing a full monthly license, secure and operate the vehicle under authority of a farm vehicle trip permit issued by this state. The licensed gross weight may not exceed eighty thousand pounds for a combination of vehicles nor forty thousand pounds for a single unit vehicle with three or more axles.

(3) Each farm vehicle trip permit shall authorize the operation of a single vehicle at the maximum legal weight limit for the vehicle for thirty consecutive calendar days, commencing with the day of first use. No more than four such permits may be used for any one vehicle in any twelve-month period. Every permit shall identify, as the department may require, the vehicle for which it is issued and shall be completed in its entirety and signed by the operator before operation of the vehicle on the public highways of this state. Correction of data on the permit such as dates, license number, or vehicle identification number invalidates the permit. The farm vehicle trip permit shall be displayed on the vehicle to which it is issued as prescribed by the department.

(4) Vehicles operating under authority of farm vehicle trip permits are subject to all laws, rules, and regulations affecting the operation of like vehicles in this state.

(5) Farm vehicle trip permits may be obtained from the department of licensing or agents and subagents appointed by the department. The fee for each farm vehicle trip permit is six dollars and twenty-five cents. Farm vehicle trip permits sold by the department's agents or subagents are subject to fees specified in RCW 46.01.140 (4)(a), (5)(b), or (6).

(6) The proceeds from farm vehicle trip permits received by the director shall be forwarded to the state treasurer to be distributed as provided in RCW 46.68.035(2).

(7) No exchange, credits, or refunds may be given for farm vehicle trip permits after they have been purchased.

(8) The department of licensing may adopt rules as it deems necessary to administer this section. [2009 c 452 § 1; 2006 c 337 § 3; 2005 c 314 § 206.]

Effective dates—2005 c 314 §§ 110 and 201-206: See note following RCW 46.17.010.

Application—2005 c 314 §§ 201-206, 301, and 302: See note following RCW 46.17.010.

Part headings not law—2005 c 314: See note following RCW 46.17.010.

46.16.615 Commercial motor vehicle registration. (1) The department shall refuse to register a commercial motor vehicle that is owned by a motor carrier subject to RCW 46.32.080, 46.87.294, and 46.87.296 upon notification to the department by the Washington state patrol or the federal motor carrier safety administration that an out-of-service order has been placed on the department of transportation number issued to the motor carrier.

(2) The department shall revoke the vehicle registration of all commercial motor vehicles that are owned by a motor carrier subject to RCW 46.32.080, upon notification to the department by the Washington state patrol or the federal motor carrier safety administration that an out-of-service order has been placed on the department of transportation number issued to the motor carrier. The revocation must remain in effect until the department has been notified by the Washington state patrol that the out-of-service order has been rescinded.

(3) Except as provided in subsections (4) and (5) of this section, by June 30, 2009, any original or renewal application for registration of a commercial motor vehicle that is owned by a motor carrier subject to RCW 46.32.080 that is submitted to the department must be accompanied by:

(a) The department of transportation number issued to the motor carrier; and

(b) The federal taxpayer identification number of the motor carrier.

(4) By June 30, 2010, the requirements of subsection (3) of this section apply to any original or renewal application that is submitted to the department for registration of a commercial motor vehicle that is to be operated by an entity with authority under chapter 81.66, 81.68, 81.70, or 81.77 RCW, or by a household goods carrier with authority under chapter 81.80 RCW.

(5) By June 30, 2012, the requirements of subsection (3) of this section apply to any original or renewal application that is submitted to the department for registration of a commercial motor vehicle that is owned by a motor carrier subject to RCW 46.32.080, and that has a gross vehicle weight rating of 7,258 kilograms (16,001 pounds) or more. [2009 c 46 § 5; 2007 c 419 § 5.]

Findings—Short title—2007 c 419: See notes following RCW 46.16.004.

46.16.680 Kit vehicles. All kit vehicles are licensed as original transactions when first titled in Washington, and the following provisions apply:

(1) The department of licensing shall charge original licensing fees and issue new plates appropriate to the use class.

(2) An inspection by the Washington state patrol is required to determine the correct identification number, and year or make if needed.

(3) The use class is the actual use of the vehicle, i.e. passenger car or truck.

(4) The make shall be listed as "KITV," and the series and body designation must describe a discrete vehicle model.

(5) Upon payment of original licensing fees the department may license a kit vehicle under RCW 46.16.305(1) as a street rod if the vehicle is manufactured to have the same appearance as a similar vehicle manufactured before 1949.

(6) For a manufactured new vehicle kit and a manufactured body kit, the model year of the vehicle is the year reflected on the manufacturer's certificate of origin for that vehicle. If this is not available, the Washington state patrol shall assign a model year at the time of inspection.

(7) The vehicle identification number (VIN) of a new vehicle kit and body kit is the vehicle identification number as reflected on the manufacturer's certificate of origin. If the VIN is not available, the Washington state patrol shall assign a VIN at the time of inspection.

(8) The department may not deny a vehicle registration, or vehicle license plates, to an applicant who completes the requisite application, is a Washington resident as defined in RCW 46.16.028, complies with this section, and pays the requisite vehicle licensing fees and taxes. [2009 c 284 § 2; 1996 c 225 § 10.]

Finding—1996 c 225: See note following RCW 46.04.125.

46.16.685 License plate technology account. The license plate technology account is created in the state treasury. All receipts collected under RCW 46.01.140(4)(e)(ii) must be deposited into this account. Expenditures from this account must support current and future license plate technology and systems integration upgrades for both the department and correctional industries. Moneys in the account may be spent only after appropriation. Additionally, the moneys in this account may be used to reimburse the motor vehicle account for any appropriation made to implement the digital license plate system. During the 2007-2009 and 2009-2011 fiscal biennia, the legislature may transfer from the license plate technology account to the highway safety account such amounts as reflect the excess fund balance of the license plate technology account. [2009 c 470 § 704; 2007 c 518 § 704; 2003 c 370 § 4.]

Effective date—2009 c 470: See note following RCW 46.68.170.

Severability—Effective date—2007 c 518: See notes following RCW 46.68.170.

46.16.725 Board—Powers and duties—Moratorium on issuance of special plates. (1) The creation of the board does not in any way preclude the authority of the legislature to independently propose and enact special license plate legislation.

(2) The board must review and either approve or reject special license plate applications submitted by sponsoring organizations.

(3) Duties of the board include but are not limited to the following:

(a) Review and approve the annual financial reports submitted by sponsoring organizations with active special license plate series and present those annual financial reports to the senate and house transportation committees;

(b) Report annually to the senate and house transportation committees on the special license plate applications that were considered by the board;

(c) Issue approval and rejection notification letters to sponsoring organizations, the department, the chairs of the senate and house of representatives transportation committees, and the legislative sponsors identified in each application. The letters must be issued within seven days of making a determination on the status of an application;

(d) Review annually the number of plates sold for each special license plate series created after January 1, 2003. The board may submit a recommendation to discontinue a special plate series to the chairs of the senate and house of representatives transportation committees;

(e) Provide policy guidance and directions to the department concerning the adoption of rules necessary to limit the number of special license plates that an organization or a governmental entity may apply for.

(4) Except as provided in chapter 72, Laws of 2008, in order to assess the effects and impact of the proliferation of special license plates, the legislature declares a temporary moratorium on the issuance of any additional plates until July 1, 2011. During this period of time, the special license plate review board created in RCW 46.16.705 and the department of licensing are prohibited from accepting, reviewing, processing, or approving any applications. Additionally, no special license plate may be enacted by the legislature during the moratorium, unless the proposed license plate has been approved by the board before February 15, 2005. [2009 c 470 § 710; 2008 c 72 § 2; 2007 c 518 § 711. Prior: 2005 c 319 § 119; 2005 c 210 § 7; 2003 c 196 § 103.]

Effective date—2009 c 470: See note following RCW 46.68.170.

Severability—Effective date—2007 c 518: See notes following RCW 46.68.170.

Findings—Intent—Part headings—Effective dates—2005 c 319: See notes following RCW 43.17.020.

Part headings not law—2003 c 196: See note following RCW 46.16.700.

Chapter 46.20 RCW
DRIVERS' LICENSES—IDENTICARDS

Sections

46.20.075 Intermediate license.
46.20.118 Negative file.
46.20.155 Voter registration—Services.
46.20.270 Conviction of offense requiring withholding driving privilege—Procedures—Definitions.
46.20.341 Relicensing diversion programs—Program information to administrative office of the courts.
46.20.500 Special endorsement—Exceptions.

46.20.075 Intermediate license. (1) An intermediate license authorizes the holder to drive a motor vehicle under the conditions specified in this section. An applicant for an intermediate license must be at least sixteen years of age and:

(a) Have possessed a valid instruction permit for a period of not less than six months;

(b) Have passed a driver licensing examination administered by the department;

(c) Have passed a course of driver's education in accordance with the standards established in RCW 46.20.100;

(d) Present certification by his or her parent, guardian, or employer to the department stating (i) that the applicant has had at least fifty hours of driving experience, ten of which were at night, during which the driver was supervised by a person at least twenty-one years of age who has had a valid driver's license for at least three years, and (ii) that the applicant has not been issued a notice of traffic infraction or cited for a traffic violation that is pending at the time of the application for the intermediate license;

(e) Not have been convicted of or found to have committed a traffic violation within the last six months before the application for the intermediate license; and

(f) Not have been adjudicated for an offense involving the use of alcohol or drugs during the period the applicant held an instruction permit.

(2) For the first six months after the issuance of an intermediate license or until the holder reaches eighteen years of age, whichever occurs first, the holder of the license may not operate a motor vehicle that is carrying any passengers under the age of twenty who are not members of the holder's immediate family as defined in RCW 42.17.020. For the remaining period of the intermediate license, the holder may not operate a motor vehicle that is carrying more than three passengers who are under the age of twenty who are not members of the holder's immediate family.

(3) The holder of an intermediate license may not operate a motor vehicle between the hours of 1 a.m. and 5 a.m. except when the holder is accompanied by a parent, guardian, or a licensed driver who is at least twenty-five years of age.

(4) It is a traffic infraction for the holder of an intermediate license to operate a motor vehicle in violation of the restrictions imposed under this section.

(5) Enforcement of this section by law enforcement officers may be accomplished only as a secondary action when a driver of a motor vehicle has been detained for a suspected violation of this title or an equivalent local ordinance or some other offense.

(6) An intermediate licensee may drive at any hour without restrictions on the number of passengers in the vehicle if necessary for agricultural purposes.

(7) An intermediate licensee may drive at any hour without restrictions on the number of passengers in the vehicle if, for the twelve-month period following the issuance of the intermediate license, he or she:

(a) Has not been involved in an accident involving only one motor vehicle;

(b) Has not been involved in an accident where he or she was cited in connection with the accident or was found to have caused the accident;

(c) Has not been involved in an accident where no one was cited or was found to have caused the accident; and

(d) Has not been convicted of or found to have committed a traffic offense described in chapter 46.61 RCW or violated restrictions placed on an intermediate licensee under this section. [2009 c 125 § 1; 2000 c 115 § 2.]

Finding—2000 c 115: "The legislature has recognized the need to develop a graduated licensing system in light of the disproportionately high incidence of motor vehicle crashes involving youthful motorists. This system will improve highway safety by progressively developing and improving the skills of younger drivers in the safest possible environment, thereby reducing the number of vehicle crashes." [2000 c 115 § 1.]

Effective date—2000 c 115 §§ 1-10: "Sections 1 through 10 of this act take effect July 1, 2001." [2000 c 115 § 14.]

46.20.118 Negative file. (1) The department shall maintain a negative file. It shall contain negatives of all pictures taken by the department of licensing as authorized by this chapter. Negatives in the file shall not be available for public inspection and copying under chapter 42.56 RCW.

(2) The department may make the file available to official governmental enforcement agencies to assist in the investigation by the agencies of suspected criminal activity or for the purposes of verifying identity when a law enforcement officer is authorized by law to request identification from an individual.

(3) The department shall make the file available to the office of the secretary of state, at the expense of the secretary of state, to assist in maintenance of the statewide voter registration database.

(4) The department may also provide a print to the driver's next of kin in the event the driver is deceased. [2009 c 366 § 1. Prior: 2005 c 274 § 307; 2005 c 246 § 23; 1990 c 250 § 37; 1981 c 22 § 1; 1979 c 158 § 149; 1969 ex.s. c 155 § 5.]

Part headings not law—Effective date—2005 c 274: See RCW 42.56.901 and 42.56.902.

Effective date—2005 c 246: See note following RCW 10.64.140.

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

Purpose—1969 ex.s. c 155: "The identification of the injured or the seriously ill is often difficult. The need for an identification file to facilitate use by proper law enforcement officers has hampered law enforcement. Personal identification for criminal, personal and commercial reasons is becoming most important at a time when it is increasingly difficult to accomplish. The legislature finds that the public health and welfare requires a standard and readily recognizable means of identification of each person living within the state. The legislature further finds that the need for an identification file by law enforcement agencies must be met. The use of photographic drivers' licenses will greatly aid the problem, but some means of identification must be provided for persons who do not possess a driver's license. The purpose of this 1969 amendatory act is to provide for the positive identification of persons, both through an expanded use of drivers' licenses and also through issue of personal identification cards for nondrivers." [1969 ex.s. c 155 § 1.]

Effective date—1969 ex.s. c 155: "This 1969 amendatory act shall take effect September 1, 1969." [1969 ex.s. c 155 § 7.]

46.20.155 Voter registration—Services. (1) Before issuing an original license or identicard or renewing a license or identicard under this chapter, the licensing agent shall determine if the applicant wants to register to vote or transfer his or her voter registration by asking the following question:

"Do you want to register to vote or transfer your voter registration?"

If the applicant chooses to register or transfer a registration, the agent shall ask the following:

(1) "Are you a United States citizen?"

(2) "Are you or will you be eighteen years of age on or before the next election?"

If the applicant answers in the affirmative to both questions, the agent shall then submit the registration or transfer. If the applicant answers in the negative to either question, the agent shall not submit a voter registration application.

(2) The department shall establish a procedure that substantially meets the requirements of subsection (1) of this section when permitting an applicant to renew a license or identicard by mail or by electronic commerce. [2009 c 369 § 42; 2005 c 246 § 24; 2004 c 249 § 7; 2001 c 41 § 14; 1990 c 143 § 6.]

Effective date—2005 c 246: See note following RCW 10.64.140.

Effective date—1990 c 143: See note following RCW 29A.08.340.

Voter registration with driver licensing: RCW 29A.08.340 and 29A.08.350.

46.20.270 Conviction of offense requiring withholding driving privilege—Procedures—Definitions. (1) Whenever any person is convicted of any offense for which this title makes mandatory the withholding of the driving privilege of such person by the department, the court in which such conviction is had shall forthwith mark the person's Washington state driver's license or permit to drive, if any, in a manner authorized by the department. A valid driver's license or permit to drive marked under this subsection shall remain in effect until the person's driving privilege is withheld by the department pursuant to notice given under RCW 46.20.245, unless the license or permit expires or otherwise becomes invalid prior to the effective date of this action. Perfection of notice of appeal shall stay the execution of sentence including the withholding of the driving privilege.

(2) Every court having jurisdiction over offenses committed under this chapter, or any other act of this state or municipal ordinance adopted by a local authority regulating the operation of motor vehicles on highways, or any federal authority having jurisdiction over offenses substantially the same as those set forth in Title 46 RCW which occur on federal installations within this state, shall immediately forward to the department a forfeiture of bail or collateral deposited to secure the defendant's appearance in court, a payment of a fine, penalty, or court cost, a plea of guilty or nolo contendere or a finding of guilt, or a finding that any person has committed a traffic infraction an abstract of the court record in the form prescribed by rule of the supreme court, showing the conviction of any person or the finding that any person has committed a traffic infraction in said court for a violation of any said laws other than regulations governing standing, stopping, parking, and pedestrian offenses.

(3) Every state agency or municipality having jurisdiction over offenses committed under this chapter, or under any other act of this state or municipal ordinance adopted by a state or local authority regulating the operation of motor vehicles on highways, may forward to the department within ten days of failure to respond, failure to pay a penalty, failure to appear at a hearing to contest the determination that a violation of any statute, ordinance, or regulation relating to standing, stopping, parking, or other infraction issued under RCW 46.63.030(1)(d) has been committed, or failure to appear at a hearing to explain mitigating circumstances, an abstract of the citation record in the form prescribed by rule of the department, showing the finding by such municipality that two or more violations of laws governing standing, stopping, and parking or one or more other infractions issued under RCW 46.63.030(1)(d) have been committed and indicating the nature of the defendant's failure to act. Such violations or infractions may not have occurred while the vehicle is stolen from the registered owner or is leased or rented under a bona fide commercial vehicle lease or rental agreement between a lessor engaged in the business of leasing vehicles and a lessee who is not the vehicle's registered owner. The department may enter into agreements of reciprocity with the duly authorized representatives of the states for reporting to each other violations of laws governing standing, stopping, and parking.

(4) For the purposes of this title and except as defined in RCW 46.25.010, "conviction" means a final conviction in a state or municipal court or by any federal authority having jurisdiction over offenses substantially the same as those set forth in this title which occur on federal installations in this state, an unvacated forfeiture of bail or collateral deposited to secure a defendant's appearance in court, the payment of a fine or court cost, a plea of guilty or nolo contendere, or a finding of guilt on a traffic law violation charge, regardless of whether the imposition of sentence or sanctions are deferred or the penalty is suspended, but not including entry into a deferred prosecution agreement under chapter 10.05 RCW.

(5) For the purposes of this title, "finding that a traffic infraction has been committed" means a failure to respond to a notice of infraction or a determination made by a court pursuant to this chapter. Payment of a monetary penalty made pursuant to RCW 46.63.070(2) is deemed equivalent to such a finding. [2009 c 181 § 1; 2006 c 327 § 1; 2005 c 288 § 3; 2004 c 231 § 5; 1990 2nd ex.s. c 1 § 402; 1990 c 250 § 42; 1982 1st ex.s. c 14 § 5; 1979 ex.s. c 136 § 58; 1979 c 61 § 7; 1977 ex.s. c 3 § 1; 1967 ex.s. c 145 § 55; 1965 ex.s. c 121 § 22; 1961 c 12 § 46.20.270. Prior: 1937 c 188 § 68; RRS § 6312-68; prior: 1923 c 122 § 2, part; 1921 c 108 § 9, part; RRS § 6371, part.]

Effective date—2005 c 288: See note following RCW 46.20.245.

Severability—1990 2nd ex.s. c 1: See note following RCW 82.14.300.

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

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

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

Severability—1967 ex.s. c 145: See RCW 47.98.043.

46.20.341 Relicensing diversion programs—Program information to administrative office of the courts. (1)(a) A person who violates RCW 46.20.342(1)(c)(iv) in a jurisdiction that does not have a relicensing diversion program shall be provided with an abstract of his or her driving record by the court or the prosecuting attorney, in addition to a list of his or her unpaid traffic offense related fines and the contact information for each jurisdiction or collection agency to which money is owed.

(b) A fee of up to twenty dollars may be imposed by the court in addition to any fee required by the department for provision of the driving abstract.

(2)(a) Superior courts or courts of limited jurisdiction in counties or cities are authorized to participate or provide relicensing diversion programs to persons who violate RCW 46.20.342(1)(c)(iv).

(b) Eligibility for the relicensing diversion program shall be limited to violators with no more than four convictions under RCW 46.20.342(1)(c)(iv) in the ten years preceding the date of entering the relicensing diversion program, subject to a less restrictive rule imposed by the presiding judge of the county district court or municipal court. People subject to arrest under a warrant are not eligible for the diversion program.

(c) The diversion option may be offered at the discretion of the prosecuting attorney before charges are filed, or by the court after charges are filed.

(d) A person who is the holder of a commercial driver's license or who was operating a commercial motor vehicle at the time of the violation of RCW 46.20.342(1)(c)(iv) may not participate in the diversion program under this section.

(e) A relicensing diversion program that is structured to occur after charges are filed may charge participants a one-time fee of up to one hundred dollars, which is not subject to chapters 3.50, 3.62, and 35.20 RCW, and shall be used to support administration of the program. The fee of up to one hundred dollars shall be included in the total to be paid by the participant in the relicensing diversion program.

(3) A relicensing diversion program shall be designed to assist suspended drivers to regain their license and insurance and pay outstanding fines.

(4)(a) Counties and cities that operate relicensing diversion programs shall, subject to available funds, provide information to the administrative office of the courts on an annual basis regarding the eligibility criteria used for the program, the number of referrals from law enforcement, the number of participants accepted into the program, the number of participants who regain their driver's license and insurance, the total amount of fines collected, the costs associated with the program, and other information as determined by the office.

(b) The administrative office of the courts is directed, subject to available funds, to compile and analyze the data required to be submitted in this section and develop recommendations for a best practices model for relicensing diversion programs. [2009 c 490 § 1.]

46.20.500 Special endorsement—Exceptions. (1) No person may drive either a two-wheeled or a three-wheeled motorcycle, or a motor-driven cycle unless such person has a valid driver's license specially endorsed by the director to enable the holder to drive such vehicles.

(2) However, a person sixteen years of age or older, holding a valid driver's license of any class issued by the state of the person's residence, may operate a moped without taking any special examination for the operation of a moped.

(3) No driver's license is required for operation of an electric-assisted bicycle if the operator is at least sixteen years of age. Persons under sixteen years of age may not operate an electric-assisted bicycle.

(4) No driver's license is required to operate an electric personal assistive mobility device or a power wheelchair.

(5) No driver's license is required to operate a motorized foot scooter. Motorized foot scooters may not be operated at any time from a half hour after sunset to a half hour before sunrise without reflectors of a type approved by the state patrol.

(6) A person holding a valid driver's license may operate a motorcycle as defined under RCW 46.04.330(2) without a motorcycle endorsement. [2009 c 275 § 4. Prior: 2003 c 353 § 9; 2003 c 141 § 7; 2003 c 41 § 1; 2002 c 247 § 6; 1999 c 274 § 8; 1997 c 328 § 3; 1982 c 77 § 1; 1979 ex.s. c 213 § 6; 1967 c 232 § 1.]

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

Effective date—2003 c 353: See note following RCW 46.04.320.

Short title—2003 c 41: "This act shall be known as the Monty Lish Memorial Act." [2003 c 41 § 6.]

Effective date—2003 c 41: "This act takes effect January 1, 2004." [2003 c 41 § 7.]

Legislative review—2002 c 247: See note following RCW 46.04.1695.

Severability—1982 c 77: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 c 77 § 10.]

Mopeds
operation and safety standards: RCW 46.61.710, 46.61.720.
registration: RCW 46.16.630.

Chapter 46.25 RCW
UNIFORM COMMERCIAL DRIVER'S LICENSE ACT

Sections

46.25.010 Definitions.
46.25.060 Knowledge and skills test, exemptions—Expiration of subsection—Instruction permit.

46.25.010 Definitions. The definitions set forth in this section apply throughout this chapter.

(1) "Alcohol" means any substance containing any form of alcohol, including but not limited to ethanol, methanol, propanol, and isopropanol.

(2) "Alcohol concentration" means:

(a) The number of grams of alcohol per one hundred milliliters of blood; or

(b) The number of grams of alcohol per two hundred ten liters of breath.

(3) "Commercial driver's license" (CDL) means a license issued to an individual under chapter 46.20 RCW that has been endorsed in accordance with the requirements of this chapter to authorize the individual to drive a class of commercial motor vehicle.

(4) The "commercial driver's license information system" (CDLIS) is the information system established pursuant to the CMVSA to serve as a clearinghouse for locating information related to the licensing and identification of commercial motor vehicle drivers.

(5) "Commercial driver's instruction permit" means a permit issued under RCW 46.25.060(5).

(6) "Commercial motor vehicle" means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:

(a) Has a gross vehicle weight rating of 11,794 kilograms or more (26,001 pounds or more) inclusive of a towed unit with a gross vehicle weight rating of more than 4,536 kilograms (10,000 pounds or more); or

(b) Has a gross vehicle weight rating of 11,794 kilograms or more (26,001 pounds or more); or

(c) Is designed to transport sixteen or more passengers, including the driver; or

(d) Is of any size and is used in the transportation of hazardous materials as defined in this section; or

(e) Is a school bus regardless of weight or size.

(7) "Conviction" means an unvacated adjudication of guilt, or a determination that a person has violated or failed to comply with the law in a court of original jurisdiction or by an authorized administrative tribunal, an unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court, a plea of guilty or nolo contendere accepted by the court, the payment of a fine or court cost, entry into a deferred prosecution program under chapter 10.05 RCW, or violation of a condition of release without bail, regardless of whether or not the penalty is rebated, suspended, or probated.

(8) "Disqualification" means a prohibition against driving a commercial motor vehicle.

(9) "Drive" means to drive, operate, or be in physical control of a motor vehicle in any place open to the general public for purposes of vehicular traffic. For purposes of RCW 46.25.100, 46.25.110, and 46.25.120, "drive" includes operation or physical control of a motor vehicle anywhere in the state.

(10) "Drugs" are those substances as defined by RCW 69.04.009, including, but not limited to, those substances defined by 49 C.F.R. 40.3.

(11) "Employer" means any person, including the United States, a state, or a political subdivision of a state, who owns or leases a commercial motor vehicle, or assigns a person to drive a commercial motor vehicle.

(12) "Gross vehicle weight rating" (GVWR) means the value specified by the manufacturer as the maximum loaded weight of a single vehicle. The GVWR of a combination or articulated vehicle, commonly referred to as the "gross combined weight rating" or GCWR, is the GVWR of the power unit plus the GVWR of the towed unit or units. If the GVWR of any unit cannot be determined, the actual gross weight will be used. If a vehicle with a GVWR of less than 11,794 kilograms (26,001 pounds or less) has been structurally modified to carry a heavier load, then the actual gross weight capacity of the modified vehicle, as determined by RCW 46.44.041 and 46.44.042, will be used as the GVWR.

(13) "Hazardous materials" means any material that has been designated as hazardous under 49 U.S.C. Sec. 5103 and is required to be placarded under subpart F of 49 C.F.R. part 172 or any quantity of a material listed as a select agent or toxin in 42 C.F.R. part 73.

(14) "Motor vehicle" means a vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power used on highways, or any other vehicle required to be registered under the laws of this state, but does not include a vehicle, machine, tractor, trailer, or semitrailer operated exclusively on a rail.

(15) "Out-of-service order" means a declaration by an authorized enforcement officer of a federal, state, Canadian, Mexican, or local jurisdiction that a driver, a commercial motor vehicle, or a motor carrier operation is out-of-service pursuant to 49 C.F.R. 386.72, 392.5, 395.13, 396.9, or compatible laws, or the North American uniform out-of-service criteria.

(16) "Positive alcohol confirmation test" means an alcohol confirmation test that:

(a) Has been conducted by a breath alcohol technician under 49 C.F.R. 40; and

(b) Indicates an alcohol concentration of 0.04 or more.

A report that a person has refused an alcohol test, under circumstances that constitute the refusal of an alcohol test under 49 C.F.R. 40, will be considered equivalent to a report of a positive alcohol confirmation test for the purposes of this chapter.

(17) "School bus" means a commercial motor vehicle used to transport preprimary, primary, or secondary school students from home to school, from school to home, or to and from school-sponsored events. School bus does not include a bus used as a common carrier.

(18) "Serious traffic violation" means:

(a) Excessive speeding, defined as fifteen miles per hour or more in excess of the posted limit;

(b) Reckless driving, as defined under state or local law;

(c) A violation of a state or local law relating to motor vehicle traffic control, other than a parking violation, arising in connection with an accident or collision resulting in death to any person;

(d) Driving a commercial motor vehicle without obtaining a commercial driver's license;

(e) Driving a commercial motor vehicle without a commercial driver's license in the driver's possession; however, any individual who provides proof to the court by the date the individual must appear in court or pay any fine for such a violation, that the individual held a valid CDL on the date the citation was issued, is not guilty of a "serious traffic offense";

(f) Driving a commercial motor vehicle without the proper class of commercial driver's license endorsement or endorsements for the specific vehicle group being operated or for the passenger or type of cargo being transported; and

(g) Any other violation of a state or local law relating to motor vehicle traffic control, other than a parking violation, that the department determines by rule to be serious.

(19) "State" means a state of the United States and the District of Columbia.

(20) "Substance abuse professional" means an alcohol and drug specialist meeting the credentials, knowledge, training, and continuing education requirements of 49 C.F.R. 40.281.

(21) "Tank vehicle" means a vehicle that is designed to transport a liquid or gaseous material within a tank that is either permanently or temporarily attached to the vehicle or the chassis. Tank vehicles include, but are not limited to cargo tanks and portable tanks. However, this definition does not include portable tanks having a rated capacity under one thousand gallons.

(22) "United States" means the fifty states and the District of Columbia.

(23) "Verified positive drug test" means a drug test result or validity testing result from a laboratory certified under the authority of the federal department of health and human services that:

(a) Indicates a drug concentration at or above the cutoff concentration established under 49 C.F.R. 40.87; and

(b) Has undergone review and final determination by a medical review officer.

A report that a person has refused a drug test, under circumstances that constitute the refusal of a federal department of transportation drug test under 49 C.F.R. 40, will be considered equivalent to a report of a verified positive drug test for the purposes of this chapter. [2009 c 181 § 2. Prior: 2006 c 327 § 2; 2006 c 50 § 1; 2005 c 325 § 2; 2004 c 187 § 2; 1996 c 30 § 1; 1989 c 178 § 3.]

Intent—2005 c 325: "It is the intent of the legislature to promote the safety of drivers and passengers on Washington roads and public transportation systems. To this end, Washington has established a reporting requirement for employers of commercial drivers who test positive for unlawful substances. The legislature recognizes that transit operators and their employers are an asset to the public transportation system and continuously strive to provide a safe and efficient mode of travel. In light of this, the legislature further intends that the inclusion of transit employers in the reporting requirements serve only to enhance the current efforts of these dedicated employers and employees as they continue to provide a safe public transportation system to the citizens of Washington." [2005 c 325 § 1.]

Effective date—1996 c 30: "This act takes effect October 1, 1996." [1996 c 30 § 5.]

46.25.060 Knowledge and skills test, exemptions—Expiration of subsection—Instruction permit. (1)(a) No person may be issued a commercial driver's license unless that person is a resident of this state, has successfully completed a course of instruction in the operation of a commercial motor vehicle that has been approved by the director or has been certified by an employer as having the skills and training necessary to operate a commercial motor vehicle safely, and has passed a knowledge and skills test for driving a commercial motor vehicle that complies with minimum federal standards established by federal regulation enumerated in 49 C.F.R. part 383, subparts G and H, and has satisfied all other requirements of the CMVSA in addition to other requirements imposed by state law or federal regulation. The tests must be prescribed and conducted by the department. In addition to the fee charged for issuance or renewal of any license, the applicant shall pay a fee of no more than ten dollars for each classified knowledge examination, classified endorsement knowledge examination, or any combination of classified license and endorsement knowledge examinations. The applicant shall pay a fee of no more than one hundred dollars for each classified skill examination or combination of classified skill examinations conducted by the department.

(b) The department may authorize a person, including an agency of this or another state, an employer, a private driver training facility, or other private institution, or a department, agency, or instrumentality of local government, to administer the skills test specified by this section under the following conditions:

(i) The test is the same which would otherwise be administered by the state;

(ii) The third party has entered into an agreement with the state that complies with the requirements of 49 C.F.R. part 383.75; and

(iii) The director has adopted rules as to the third party testing program and the development and justification for fees charged by any third party.

(c) If the applicant's primary use of a commercial driver's license is for any of the following, then the applicant shall pay a fee of no more than seventy-five dollars for each classified skill examination or combination of classified skill examinations whether conducted by the department or a third-party tester:

(i) Public benefit not-for-profit corporations that are federally supported head start programs; or

(ii) Public benefit not-for-profit corporations that support early childhood education and assistance programs as described in RCW 43.215.405(4).

(2) The department shall work with the office of the superintendent of public instruction to develop modified P1 and P2 skill examinations that also include the skill examination components required to obtain an "S" endorsement. In no event may a new applicant for an "S" endorsement be required to take two separate examinations to obtain an "S" endorsement and either a P1 or P2 endorsement, unless that applicant is upgrading his or her existing commercial driver's license to include an "S" endorsement. The combined P1/S or P2/S skill examination must be offered to the applicant at the same cost as a regular P1 or P2 skill examination.

(3)(a) The department may waive the skills test and the requirement for completion of a course of instruction in the operation of a commercial motor vehicle specified in this section for a commercial driver's license applicant who meets the requirements of 49 C.F.R. part 383.77.

(b) An applicant who operates a commercial motor vehicle for agribusiness purposes is exempt from the course of instruction completion and employer skills and training certification requirements under this section. By January 1, 2010, the department shall submit recommendations regarding the continuance of this exemption to the transportation committees of the legislature. For purposes of this subsection (3)(b), "agribusiness" means a private carrier who in the normal course of business primarily transports:

(i) Farm machinery, farm equipment, implements of husbandry, farm supplies, and materials used in farming;

(ii) Agricultural inputs, such as seed, feed, fertilizer, and crop protection products;

(iii) Unprocessed agricultural commodities, as defined in RCW 17.21.020, where such commodities are produced by farmers, ranchers, vineyardists, or orchardists; or

(iv) Any combination of (b)(i) through (iii) of this subsection.

This subsection (3)(b) expires July 1, 2011.

(4) A commercial driver's license or commercial driver's instruction permit may not be issued to a person while the person is subject to a disqualification from driving a commercial motor vehicle, or while the person's driver's license is suspended, revoked, or canceled in any state, nor may a commercial driver's license be issued to a person who has a commercial driver's license issued by any other state unless the person first surrenders all such licenses, which must be returned to the issuing state for cancellation.

(5)(a) The department may issue a commercial driver's instruction permit to an applicant who is at least eighteen years of age and holds a valid Washington state driver's license and who has submitted a proper application, passed the general knowledge examination required for issuance of a commercial driver's license under subsection (1) of this section, and paid the appropriate fee for the knowledge examination and an application fee of ten dollars.

(b) A commercial driver's instruction permit may not be issued for a period to exceed six months. Only one renewal or reissuance may be granted within a two-year period.

(c) The holder of a commercial driver's instruction permit may drive a commercial motor vehicle on a highway only when accompanied by the holder of a commercial driver's license valid for the type of vehicle driven who occupies a seat beside the individual for the purpose of giving instruction in driving the commercial motor vehicle. The holder of a commercial driver's instruction permit is not authorized to operate a commercial motor vehicle transporting hazardous materials.

(d) The department shall transmit the fees collected for commercial driver's instruction permits to the state treasurer. [2009 c 339 § 1; 2007 c 418 § 1; 2004 c 187 § 3; 2002 c 352 § 18; 1989 c 178 § 8.]

Effective date—2007 c 418: "This act takes effect January 15, 2008." [2007 c 418 § 2.]

Effective dates—2002 c 352: See note following RCW 46.09.070.

Chapter 46.32 RCW
VEHICLE INSPECTION

Sections

46.32.080 Commercial motor vehicle safety enforcement—Application for department of transportation number.
46.32.085 Rules to regulate commercial motor vehicle safety requirements.
46.32.090 Fees.
46.32.100 Violations—Penalties—Out-of-service orders.
46.32.120 Application to state and publicly owned vehicles.

46.32.080 Commercial motor vehicle safety enforcement—Application for department of transportation number. (1) The Washington state patrol is responsible for enforcement of safety requirements for commercial motor vehicles including, but not limited to, safety audits and compliance reviews. Those motor carriers that have operations in this state are subject to the patrol's safety audits and compliance review programs. Compliance reviews may result in the initiation of an enforcement action, which may include monetary penalties. The utilities and transportation commission is responsible for adoption and enforcement of safety requirements for vehicles operated by entities holding authority under chapters 81.66, 81.68, 81.70, and 81.77 RCW, and by household goods carriers holding authority under chapter 81.80 RCW.

(2) Motor vehicles owned and operated by farmers in the transportation of their own farm, orchard, or dairy products, including livestock and plant or animal wastes, from point of production to market or disposal, or supplies or commodities to be used on the farm, orchard, or dairy, must have a department of transportation number, as defined in RCW 46.16.004, but are exempt from safety audits and compliance reviews.

(3) All records and documents required of motor carriers with operations in this state must be available for review and inspection during normal business hours. Duly authorized agents of the state patrol conducting safety audits and compliance reviews may enter the motor carrier's place of business, or any location where records or equipment are located, at reasonable times and without advanced notice. Motor carriers who do not permit duly authorized agents to enter their place of business, or any location where records or equipment are located, for safety audits and compliance reviews are subject to enforcement action, including a monetary penalty.

(4)(a) All motor carriers with a commercial motor vehicle, as defined in RCW 46.16.004, that operate in this state must apply for a department of transportation number, as defined in RCW 46.16.004, by January 1, 2008. All entities with authority under chapters 81.66, 81.68, 81.70, and 81.77 RCW, and all household goods carriers with authority under chapter 81.80 RCW, must apply for a department of transportation number by January 1, 2010.

(b) All motor carriers operating in this state who (i) have not applied under (a) of this subsection for a department of transportation number, as defined in RCW 46.16.004, and (ii) have a commercial motor vehicle that has a gross vehicle weight rating of 7,258 kilograms (16,001 pounds) or more, must apply for a department of transportation number by January 1, 2011.

(c) The state patrol may deny an application if the applicant does not meet the requirements and standards under this chapter. The state patrol shall not issue a department of transportation number to an applicant who at the time of application has been placed out of service by the federal motor carrier safety administration. Commercial motor vehicles must be marked as prescribed by the state patrol. Those applicants with a current United States department of transportation number are exempt from applying for a department of transportation number.

(d) The state patrol may (i) place a motor carrier out of service or (ii) refuse to issue or recognize as valid a department of transportation number to an applicant who: (A) Formerly held a department of transportation number that was placed out of service for cause, and where cause has not been removed; (B) is a subterfuge for the real party in interest whose department of transportation number was placed out of service for cause, and where cause has not been removed; (C) as an individual licensee, or officer, director, owner, or managing employee of a nonindividual licensee, had a department of transportation number and was placed out of service for cause, and where cause has not been removed; or (D) has an unsatisfied debt to the state assessed under this chapter.

(e) Upon a finding by the chief of the state patrol or the chief's designee that a motor carrier is an imminent hazard or danger to the public health, safety, or welfare, the state patrol shall notify the department, and the department shall revoke the registrations for all commercial motor vehicles that are owned by the motor carrier subject to RCW 46.32.080. In determining whether a motor carrier is an imminent hazard or danger to the public health, safety, or welfare, the chief or the chief's designee shall consider safety factors. [2009 c 46 § 1; 2007 c 419 § 10; 1995 c 272 § 1.]

Effective date—2007 c 419 § 10: "Section 10 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 11, 2007]." [2007 c 419 § 19.]

Findings—Short title—2007 c 419: See notes following RCW 46.16.004.

Transfer of powers, duties, and functions: "(1) All powers, duties, and functions of the utilities and transportation commission pertaining to safety inspections of commercial vehicles, including but not limited to termi-

nal safety audits, except for those carriers subject to the economic regulation of the commission, are transferred to the Washington state patrol.

(2)(a) All reports, documents, surveys, books, records, files, papers, or written material in the possession of the utilities and transportation commission pertaining to the powers, functions, and duties transferred shall be delivered to the custody of the Washington state patrol. All cabinets, furniture, office equipment, motor vehicles, and other tangible property employed by the utilities and transportation commission in carrying out the powers, functions, and duties transferred shall be made available to the Washington state patrol. All funds, credits, or other assets held in connection with the powers, functions, and duties transferred shall be assigned to the Washington state patrol.

(b) Any appropriations made to the utilities and transportation commission for carrying out the powers, functions, and duties transferred shall, on January 1, 1996, be transferred and credited to the Washington state patrol.

(c) Whenever any question arises as to the transfer of any personnel, funds, books, documents, records, papers, files, equipment, or other tangible property used or held in the exercise of the powers and the performance of the duties and functions transferred, the director of financial management shall make a determination as to the proper allocation and certify the same to the state agencies concerned.

(3) All employees of the utilities and transportation commission engaged in performing the powers, functions, and duties transferred are transferred to the jurisdiction of the Washington state patrol. All employees classified under chapter 41.06 RCW, the state civil service law, are assigned to the Washington state patrol to perform their usual duties upon the same terms as formerly, without any loss of rights, subject to any action that may be appropriate thereafter in accordance with the laws and rules governing state civil service. These employees will only be transferred upon successful completion of the Washington state patrol background investigation.

(4) All rules and all pending business before the utilities and transportation commission pertaining to the powers, functions, and duties transferred shall be continued and acted upon by the Washington state patrol. All existing contracts and obligations remain in full force and shall be performed by the Washington state patrol.

(5) The transfer of the powers, duties, functions, and personnel of the utilities and transportation commission does not affect the validity of any act performed before January 1, 1996.

(6) If apportionments of budgeted funds are required because of the transfers directed by this section, the director of financial management shall certify the apportionments to the agencies affected, the state auditor, and the state treasurer. Each of these shall make the appropriate transfer and adjustments in funds and appropriation accounts and equipment records in accordance with the certification.

(7) Nothing contained in this section alters an existing collective bargaining unit or the provisions of an existing collective bargaining agreement until the agreement has expired or until the bargaining unit has been modified by action of the personnel board as provided by law." [1995 c 272 § 4.]

Effective dates—1995 c 272: See note following RCW 46.32.090.

46.32.085 Rules to regulate commercial motor vehicle safety requirements. (1) The Washington state patrol, in consultation with the department of licensing, shall adopt rules consistent with this chapter to regulate vehicle safety requirements for motor carriers who own, control, manage, or operate a commercial motor vehicle within this state. Except as otherwise provided in this chapter, the rules adopted by the state patrol under this section must be as rigorous as federal regulations governing certain interstate motor carriers at 49 C.F.R. Parts 40 and 380 through 397, which cover the areas of commercial motor carrier driver training, controlled substance and alcohol use and testing, compliance with the federal driver's license requirements and penalties, vehicle equipment and safety standards, hazardous material practices, financial responsibility, driver qualifications, hours of service, vehicle inspection and corrective actions, and assessed penalties for noncompliance. The state patrol shall amend these rules periodically to maintain, to the extent permissible under this chapter, standards as rigorous as the federal regulations governing certain interstate motor carriers. The state patrol shall submit a report to the legislature by December 31st of each year that outlines new rules or rule changes and explains how the state rules compare to the federal regulations.

(2) Motor vehicles operated by entities with authority under chapters 81.66, 81.68, 81.70, and 81.77 RCW, and by household goods carriers operating under chapter 81.80 RCW, must comply with rules regulating vehicle safety adopted by the utilities and transportation commission. [2009 c 46 § 2; 2007 c 419 § 14.]

Findings—Short title—2007 c 419: See notes following RCW 46.16.004.

46.32.090 Fees. The department shall collect a fee of sixteen dollars, in addition to all other fees and taxes, for each motor vehicle base plated in the state of Washington that is subject to highway inspections and compliance reviews by the state patrol under RCW 46.32.080, at the time of registration and renewal of registration under chapter 46.16 or 46.87 RCW, or the international registration plan if base plated in a foreign jurisdiction. The fee must be apportioned for those vehicles operating interstate and registered under the international registration plan. This fee does not apply to nonmotor-powered vehicles, including trailers. Refunds will not be provided for fees paid under this section when the vehicle is no longer subject to RCW 46.32.080. The department may deduct an amount equal to the cost of administering the program. All remaining fees shall be deposited with the state treasurer and credited to the state patrol highway account of the motor vehicle fund. [2009 c 46 § 3; 2007 c 419 § 11; 1996 c 86 § 1; 1995 c 272 § 2.]

Findings—Short title—2007 c 419: See notes following RCW 46.16.004.

Effective date—1996 c 86: "Section 1 of this act becomes effective with motor vehicle registration fees due or to become due January 1, 1997." [1996 c 86 § 2.]

Effective dates—1995 c 272: "Section 2 of this act becomes effective with motor vehicle registration fees due or to become due January 1, 1996. Sections 1 and 3 through 6 of this act take effect January 1, 1996." [1995 c 272 § 7.]

46.32.100 Violations—Penalties—Out-of-service orders. (1)(a) In addition to all other penalties provided by law, and except as provided otherwise in (a)(i), (ii), or (iii) of this subsection, a commercial motor vehicle that is subject to compliance reviews under this chapter and an officer, agent, or employee of a company operating a commercial motor vehicle who violates or who procures, aids, or abets in the violation of this title or any order or rule of the state patrol is liable for a penalty of one hundred dollars for each violation.

(i) It is a violation of this chapter for a person operating a commercial motor vehicle to fail to comply with the requirements of 49 C.F.R. Pt. 382, controlled substances and alcohol use and testing, 49 C.F.R. Sec. 391.15, disqualification of drivers, and 49 C.F.R. Sec. 396.9(c)(2), moving a vehicle placed out of service before the out of service defects have been satisfactorily repaired. For each violation the person is liable for a penalty of five hundred dollars.

(ii) The driver of a commercial motor vehicle who violates an out-of-service order is liable for a penalty of at least one thousand one hundred dollars but not more than two thousand seven hundred fifty dollars for each violation.

(iii) An employer who allows a driver to operate a commercial motor vehicle when there is an out-of-service order is liable for a penalty of at least two thousand seven hundred fifty dollars but not more than eleven thousand dollars for each violation.

(iv) Each violation under this subsection (1)(a) is a separate and distinct offense, and in case of a continuing violation every day's continuance is a separate and distinct violation.

(b) In addition to all other penalties provided by law, any motor carrier, company, or any officer or agent of a motor carrier or company operating a commercial motor vehicle subject to compliance reviews under this chapter who refuses entry or to make the required records, documents, and vehicles available to a duly authorized agent of the state patrol is liable for a penalty of at least five thousand dollars as well as an out-of-service order being placed on the department of transportation number, as defined in RCW 46.16.004, and vehicle registration to operate. Each violation is a separate and distinct offense, and in case of a continuing violation every day's continuance is a separate and distinct violation.

(c) A motor carrier operating a commercial motor vehicle after receiving a final unsatisfactory rating or being placed out of service is liable for a penalty of not more than eleven thousand dollars for each violation. Each violation is a separate and distinct offense, and in case of a continuing violation every day's continuance is a separate and distinct violation.

(d) A high-risk carrier is liable for double the amount of the penalty of a prior violation if the high-risk carrier repeats the same violation during a follow-up compliance review. Each repeat violation is a separate and distinct offense, and in case of a repeat continuing violation every day's continuance is a separate and distinct violation.

(2) The Washington state patrol may place an out-of-service order on a department of transportation number, as defined in RCW 46.16.004, for violations of this chapter or for nonpayment of any monetary penalties assessed by the state patrol or the utilities and transportation commission, as a result of compliance reviews, or for violations of cease and desist orders issued by the utilities and transportation commission. The state patrol shall notify the department of licensing when an out-of-service order has been placed on a motor carrier's department of transportation number. The state patrol shall notify the motor carrier when there has been an out-of-service order placed on the motor carrier's department of transportation number and the vehicle registrations have been revoked by sending a notice by first-class mail using the last known address for the registered or legal owner or owners, and recording the transmittal on an affidavit of first-class mail. Notices under this section fulfill the requirements of RCW 46.12.160. Motor carriers may not be eligible for a new department of transportation number, vehicle registration, or temporary permits to operate unless the violations that resulted in the out-of-service order have been corrected.

(3) Any penalty provided in this section is due and payable when the person incurring it receives a notice in writing from the state patrol describing the violation and advising the person that the penalty is due.

(a)(i) Any motor carrier who incurs a penalty as provided in this section, except for a high-risk carrier that incurs a penalty for a repeat violation during a follow-up compliance review, may, upon written application, request that the state patrol mitigate the penalty. An application for mitigation must be received by the state patrol within twenty days of the receipt of notice.

(ii) The state patrol may decline to consider any application for mitigation.

(b) Any motor carrier who incurs a penalty as provided in this section has a right to an administrative hearing under chapter 34.05 RCW to contest the violation or the penalty imposed, or both. In all such hearings, the procedure and rules of evidence are as specified in chapter 34.05 RCW except as otherwise provided in this chapter. Any request for an administrative hearing must be made in writing and must be received by the state patrol within twenty days after the later of (i) receipt of the notice imposing the penalty, or (ii) disposition of a request for mitigation, or the right to a hearing is waived.

(c) All penalties recovered under this section shall be paid into the state treasury and credited to the state patrol highway account of the motor vehicle fund. [2009 c 46 § 4; 2007 c 419 § 12; 2005 c 444 § 1; 1998 c 172 § 1; 1995 c 272 § 3.]

Findings—Short title—2007 c 419: See notes following RCW 46.16.004.

Effective dates—1995 c 272: See note following RCW 46.32.090.

46.32.120 Application to state and publicly owned vehicles. This chapter does not apply to vehicles exempted from registration by RCW 46.16.020. [2009 c 46 § 7.]

Chapter 46.35 RCW
RECORDING DEVICES IN MOTOR VEHICLES

Sections

46.35.010 Definitions. *(Effective July 1, 2010.)*
46.35.020 Disclosure in owner's manual, subscription service agreement, and product manual. *(Effective July 1, 2010.)*
46.35.030 Confidential information—Exceptions—Penalty. *(Effective July 1, 2010.)*
46.35.040 Tools available to access and retrieve information—When.
46.35.050 Application of consumer protection act. *(Effective July 1, 2010.)*

46.35.010 Definitions. ***(Effective July 1, 2010.)*** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Owner" means:

(a) A person having all the incidents of ownership, including legal title, of a motor vehicle, whether or not the person lends, rents, or creates a security interest in the motor vehicle;

(b) A person entitled to the possession of a motor vehicle as the purchaser under a security agreement;

(c) A person entitled to possession of a motor vehicle as a lessee pursuant to a written lease agreement for a period of more than three months; or

(d) If a third party requests access to a recording device to investigate a collision, the owner of the motor vehicle at the time the collision occurred.

(2) "Recording device" means an electronic system, and the physical device or mechanism containing the electronic system, that primarily, or incidental to its primary function,

preserves or records, in electronic form, data collected by sensors or provided by other systems within a motor vehicle. "Recording device" includes event data recorders, sensing and diagnostic modules, electronic control modules, automatic crash notification systems, geographic information systems, and any other device that records and preserves data that can be accessed related to that motor vehicle. "Recording device" does not include onboard diagnostic systems whose exclusive function is to capture fault codes used to diagnose or service the motor vehicle. [2009 c 485 § 1.]

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

Effective date—2009 c 485: "Sections 1 through 4 and 6 of this act take effect July 1, 2010." [2009 c 485 § 8.]

46.35.020 Disclosure in owner's manual, subscription service agreement, and product manual. ***(Effective July 1, 2010.)*** (1) A manufacturer of a motor vehicle sold or leased in this state, that is equipped with one or more recording devices, shall disclose in the owner's manual that the motor vehicle is equipped with one or more recording devices and, if so, the type of data recorded and whether the recording device or devices have the ability to transmit information to a central communications system or other external device.

(2) If a recording device is used as part of a subscription service, the subscription service agreement must disclose the type of information that the device may record or transmit.

(3) A disclosure made in writing is deemed a disclosure in the owner's manual.

(4) If a recording device is to be installed in a vehicle aftermarket, the manufacturer or distributor of the device shall disclose in the product manual the type of information that the device may record and whether the recording device has the ability to transmit information to a central communications system or other external device.

(5) A disclosure made in writing is deemed a disclosure in the product manual. [2009 c 485 § 2.]

Effective date—2009 c 485: See note following RCW 46.35.010.

46.35.030 Confidential information—Exceptions—Penalty. ***(Effective July 1, 2010.)*** (1) Information recorded or transmitted by a recording device may not be retrieved, downloaded, scanned, read, or otherwise accessed by a person other than the owner of the motor vehicle in which the recording device is installed except:

(a) Upon a court order or pursuant to discovery. Any information recorded or transmitted by a recording device and obtained by a court order or pursuant to discovery is private and confidential and is not subject to public disclosure;

(b) With the consent of the owner, given for a specific instance of access, for any purpose;

(c) For improving motor vehicle safety, including medical research on the human body's reaction to motor vehicle collisions, if the identity of the motor vehicle or the owner or driver of the motor vehicle is not disclosed in connection with the retrieved information;

(d) For determining the need for or facilitating emergency medical response if a motor vehicle collision occurs, provided that the information retrieved is used solely for medical purposes; or

(e) For subscription services pursuant to an agreement in which disclosure required under RCW 46.35.020 has been made, provided that the information retrieved is used solely for the purposes of fulfilling the subscription service.

(2) For the purposes of subsection (1)(c) of this section:

(a) The disclosure of a motor vehicle's vehicle identification number with the last six digits deleted or redacted is not a disclosure of the identity of the owner or driver; and

(b) Retrieved information may only be disclosed to a data processor.

(3) Information that can be associated with an individual and that is recorded or transmitted by a recording device may not be sold to a third party unless the owner of the information explicitly grants permission for the sale.

(4) Any person who violates this section is guilty of a misdemeanor. [2009 c 485 § 3.]

Effective date—2009 c 485: See note following RCW 46.35.010.

46.35.040 Tools available to access and retrieve information—When. A manufacturer of a motor vehicle sold or leased in this state that is equipped with a recording device shall ensure by licensing agreement or other means that a tool or tools are available that are capable of accessing and retrieving the information stored in a recording device. The tool or tools must be commercially available no later than ninety days after July 26, 2009. [2009 c 485 § 5.]

46.35.050 Application of consumer protection act. ***(Effective July 1, 2010.)*** The legislature finds that the practices covered by this chapter are matters vitally affecting the public interest for the purpose of applying chapter 19.86 RCW. A violation of this chapter is not reasonable in relation to the development and preservation of business and is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying chapter 19.86 RCW. [2009 c 485 § 4.]

Effective date—2009 c 485: See note following RCW 46.35.010.

Chapter 46.37 RCW
VEHICLE LIGHTING AND OTHER EQUIPMENT

Sections

46.37.430 Safety glazing—Sunscreening or coloring.
46.37.470 Air conditioning equipment.
46.37.519 Kit vehicles.
46.37.530 Motorcycles, motor-driven cycles, mopeds, electric-assisted bicycles—Helmets, other equipment—Children—Rules.

46.37.430 Safety glazing—Sunscreening or coloring. (1)(a) No person may sell any motor vehicle as specified in this title, nor may any motor vehicle as specified in this title be registered unless such vehicle is equipped with safety glazing material of a type that meets or exceeds federal standards under 49 C.F.R. Sec. 571.205.

(b) The foregoing provisions apply to all passenger-type motor vehicles, including passenger buses and school buses, but in respect to trucks, including truck tractors, the requirements as to safety glazing material apply to all glazing material used in doors, windows, and windshields in the drivers' compartments of such vehicles except as provided by subsection (4) of this section.

(c) The safety glazing material that is manufactured and installed in accordance with federal standards shall not be etched or otherwise permanently altered if the safety glazing material is installed in the windshield or any other window located in the motor vehicle passenger compartment, except for the etching of the vehicle identification number if:

(i) The maximum height of the letters or numbers do not exceed one-half inch; and

(ii) The etched vehicle identification number is not located in a position that interferes with the vision of any occupant of the motor vehicle.

(2) For the purposes of this section:

(a) "Light transmission" means the ratio of the amount of total visible light, expressed in percentages, that is allowed to pass through the sunscreening or coloring material to the amount of total visible light falling on the motor vehicle window.

(b) "Net film screening" means the total sunscreening or coloring material applied to the window that includes both the material applied by the manufacturer during the safety glazing and any film sunscreening or coloring material applied after the vehicle is manufactured.

(c) "Reflectance" means the ratio of the amount of total light, expressed in percentages, that is reflected outward by the sunscreening or coloring material to the amount of total light falling on the motor vehicle window.

(d) "Safety glazing materials" means glazing materials so constructed, treated, or combined with other materials as to reduce substantially, in comparison with ordinary sheet glass or plate glass, the likelihood of injury to persons by objects from exterior sources or by these safety glazing materials when they may be cracked or broken.

(3) The director of licensing shall not register any motor vehicle which is subject to the provisions of this section unless it is equipped with an approved type of safety glazing material, and he or she shall suspend the registration of any motor vehicle so subject to this section which the director finds is not so equipped until it is made to conform to the requirements of this section.

(4) No person may sell or offer for sale, nor may any person operate a motor vehicle registered in this state which is equipped with, any camper manufactured after May 23, 1969, unless such camper is equipped with safety glazing material of a type conforming to rules adopted under 49 C.F.R. Sec. 571.205 wherever glazing materials are used in outside windows and doors.

(5) No film sunscreening or coloring material that reduces light transmittance to any degree may be applied to the surface of the safety glazing material in a motor vehicle unless it meets the following standards for such material:

(a) The maximum level of net film sunscreening to be applied to any window, except the windshield, shall have a total reflectance of thirty-five percent or less, and a light transmission of twenty-four percent or more, where the vehicle is equipped with outside rearview mirrors on both the right and left. Installation of more than a single sheet of film sunscreening material to any window is prohibited.

(b) Hearses, collector vehicles, limousines and passenger buses used to transport persons for compensation, ambulances, rescue squad vehicles, any other emergency medical vehicle licensed under RCW 18.73.130 that is used to transport patients, and any vehicle identified by the manufacturer as a truck, motor home, or multipurpose passenger vehicle as defined in 49 C.F.R. Sec. 571.3, may have net film sunscreening applied on any window to the rear of the driver that has less than twenty-four percent light transmittance, if the light reflectance is thirty-five percent or less and the vehicle is equipped with outside rearview mirrors on both the right and left.

(c) A person or business tinting windows for profit who tints windows within restricted areas of the glazing system shall supply a sticker to be affixed to the driver's door post, in the area adjacent to the manufacturer's identification tag. Installation of this sticker certifies that the glazing application meets this chapter's standards for light transmission, reflectance, and placement requirements. Stickers must be no smaller than three-quarters of an inch by one and one-half inches, and no larger than two inches by two and one-half inches. The stickers must be of sufficient quality to endure exposure to harsh climate conditions. The business name and state tax identification number of the installer must be clearly visible on the sticker.

(d) A greater degree of light reduction is permitted on all windows and the top six inches of windshields of a vehicle operated by or carrying as a passenger a person who possesses a written verification from a licensed physician that the operator or passenger must be protected from exposure to sunlight for physical or medical reasons.

(e) A greater degree of light reduction is permitted along the top edge of the windshield as long as the product is transparent and does not extend into the AS-1 portion of the windshield or extend more than six inches from the top of the windshield. Clear film sunscreening material that reduces or eliminates ultraviolet light may be applied to windshields.

(f) When film sunscreening material is applied to any window except the windshield, outside mirrors on both the left and right sides shall be located so as to reflect to the driver a view of the roadway, through each mirror, a distance of at least two hundred feet to the rear of the vehicle.

(g) The following types of film sunscreening material are not permitted:

(i) Mirror finish products;

(ii) Red, gold, yellow, or black material; or

(iii) Film sunscreening material that is in liquid preapplication form and brushed or sprayed on.

(6) Subsection (5) of this section does not prohibit:

(a) The use of shaded or heat-absorbing safety glazing material in which the shading or heat-absorbing characteristics have been applied at the time of manufacture of the safety glazing material and which meet federal standards for such safety glazing materials.

(b) The use and placement of federal, state, or local certificates or decals on any window as required by applicable laws or regulations. However, any such certificate or decal must be of a size and placed on the motor vehicle so as not to impair the ability of the driver to safely operate the motor vehicle.

(c) Sunscreening devices to be applied to any window behind the driver provided that the devices reduce the driver's area of vision uniformly and by no more than fifty percent, as measured on a horizontal plane. If sunscreening devices are applied to the rear window, the vehicle must be

equipped with outside rearview mirrors on both the left and right.

(d) Recreational products, such as toys, cartoon characters, stuffed animals, signs, and any other vision-reducing article or material to be applied to or placed in windows behind the driver provided that they do not interfere, in their size or position, with the driver's ability to see other vehicles, persons, or objects.

(7) It is a traffic infraction for any person to operate a vehicle for use on the public highways of this state, if the vehicle is equipped with film sunscreening or coloring material in violation of this section.

(8) Owners of vehicles with film sunscreening material applied to windows to the rear of the driver, prior to June 7, 1990, must comply with the requirements of this section and RCW 46.37.435 by July 1, 1993.

(9) The side and rear windows of law enforcement vehicles are exempt from the requirements of subsection (5) of this section. However, when law enforcement vehicles are sold to private individuals the film sunscreening or coloring material must comply with the requirements of subsection (5) of this section or documentation must be provided to the buyer stating that the vehicle windows must comply with the requirements of subsection (5) of this section before operation of the vehicle. [2009 c 142 § 1; 2007 c 168 § 1; 1993 c 384 § 1; 1990 c 95 § 1; 1989 c 210 § 1; 1987 c 330 § 723; 1986 c 113 § 5; 1985 c 304 § 1; 1979 c 158 § 157; 1969 ex.s. c 281 § 47; 1961 c 12 § 46.37.430. Prior: 1955 c 269 § 43; prior: 1947 c 220 § 1; 1937 c 189 § 40; Rem. Supp. 1947 § 6360-40; RCW 46.36.090.]

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

46.37.470 Air conditioning equipment. (1) "Air conditioning equipment," as used or referred to in this section, means mechanical vapor compression refrigeration equipment which is used to cool the driver's or passenger compartment of any motor vehicle.

(2) Such equipment shall be manufactured, installed, and maintained with due regard for the safety of the occupants of the vehicle and the public and shall not contain any refrigerant which is toxic to persons or which is flammable, unless the refrigerant is included in the list published by the United States environmental protection agency, as it exists on July 26, 2009, as a safe alternative motor vehicle air conditioning substitute for chlorofluorocarbon-12 under 42 U.S.C. Sec. 7671k(c).

(3) The state patrol may adopt and enforce safety requirements, regulations, and specifications consistent with the requirements of this section applicable to such equipment which shall correlate with and, so far as possible, conform to the current recommended practice or standard applicable to such equipment approved by the society of automotive engineers.

(4) No person shall have for sale, offer for sale, sell, or equip any motor vehicle with any such equipment unless it complies with the requirements of this section.

(5) No person shall operate on any highway any motor vehicle equipped with any air conditioning equipment unless said equipment complies with the requirements of this section. [2009 c 256 § 1; 1987 c 330 § 726; 1961 c 12 § 46.37.470. Prior: 1955 c 269 § 47.]

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

46.37.519 Kit vehicles. (1) For the purposes of this section:

(a) "Kit vehicle" means a passenger car or light truck assembled from a manufactured kit, and is either (i) a kit consisting of a prefabricated body and chassis used to construct a complete vehicle, or (ii) a kit consisting of a prefabricated body to be mounted on an existing vehicle chassis and drive train, commonly referred to as a donor vehicle. "Kit vehicle" does not include a vehicle that has been assembled by a manufacturer.

(b) "Major component part" includes at least each of the following vehicle parts: (i) Engines and short blocks; (ii) frame; (iii) transmission or transfer case; (iv) cab; (v) door; (vi) front or rear differential; (vii) front or rear clip; (viii) quarter panel; (ix) truck bed or box; (x) seat; (xi) hood; (xii) bumper; (xiii) fender; and (xiv) airbag.

(2) A kit vehicle must, prior to inspection, contain the following components:

(a) Brakes on all wheels. The service brakes, upon application, must be capable of stopping the vehicle within a twelve-foot lane and (i) developing an average tire to road retardation force of not less than 52.8 percent of the gross vehicle weight, (ii) decelerating the vehicle at a rate of not less than seventeen feet per second, or (iii) stopping the vehicle within a distance of twenty-five feet from a speed of twenty miles per hour. Tests must be made on a level, dry, concrete or asphalt surface free from loose material;

(b) Brake hoses that comply with 49 C.F.R. Sec. 571.106;

(c) Brake fluids that comply with 49 C.F.R. Sec. 571.119;

(d) A parking brake that must operate on at least two wheels on the same axle, and when applied, must be capable of holding the vehicle on any grade on which the vehicle is operated. The parking brake must be separately actuated so that failure of any part of the service brake actuation system will not diminish the vehicle's parking brake holding capability;

(e) Lighting equipment that complies with 49 C.F.R. Sec. 571.108;

(f) Pneumatic tires that comply with 49 C.F.R. Sec. 571.109;

(g) Glazing material that complies with 49 C.F.R. Sec. 571.205. The driver must be provided with a windshield and side windows or opening that allows an outward horizontal vision capability, ninety degrees each side of a vertical plane passing through the fore and aft centerline of the vehicle. This range of vision must not be interrupted by window framing not exceeding four inches in width at each side location;

(h) Seat belt assemblies that comply with 49 C.F.R. Sec. 571.209;

(i) Defroster and defogging devices capable of defogging and defrosting the windshield area, except vehicles or exact replicas of vehicles manufactured prior to January 1938 are exempt from this requirement;

(j) Door latches that firmly and automatically secure the door when pushed closed and that allow each door to be opened both from the inside and outside, if the vehicle is enclosed with side doors leading directly into a compartment that contains one or more seating accommodations;

(k) A floor plan that is capable of supporting the weight of the number of occupants that the vehicle is designed to carry;

(l) If an enclosed kit vehicle powered by an internal combustion engine, a passenger compartment that must be constructed to prevent the entry of exhaust fumes into the passenger compartment;

(m) Fenders that must be installed on all wheels and cover the entire tread width that comes in contact with the road surface. Coverage of the tire tread circumference must be from at least fifteen degrees in front and to at least seventy-five degrees to the rear of the vertical centerline at each wheel measured from the center of the wheel rotation. The tire must not come in contact with the body, fender, chassis, or suspension of the vehicle. Kit vehicles that are more than forty years old and are owned and operated primarily as collector's vehicles are exempt from this fender requirement if the vehicle is used and driven during fair weather on well-maintained, hard-surfaced roads;

(n) A speedometer that is calibrated to indicate miles per hour, and may also indicate kilometers per hour;

(o) Mirrors as outlined in RCW 46.37.400. Mirror mountings must provide for mirror adjustment by tilting both horizontally and vertically;

(p) An accelerator control system that, in accordance with 49 C.F.R. Sec. 571.124, contains a double spring that returns engine throttle to an idle position when the driver removes the actuating force from the accelerator control. The geometry of the throttle linkage must be designed so that the throttle will not lock in an open position. A vehicle equipped with cruise control is exempt when the cruise control is actuated;

(q) A fuel system that, in accordance with 49 C.F.R. Secs. 571.301 and 571.302, is securely fastened to the vehicle so as not to interfere with the vehicle's operation. The components, such as tank, tubing, hoses, and pump, must be of leak proof design and be securely attached with fasteners designed for that purpose. All fuel system vent lines must extend outside of the passenger compartment and be positioned as not to be in contact with the high temperature surfaces or moving components. If the vehicle is fueled using alternative measures, it must be installed in accordance with any applicable standards set by the United States department of transportation;

(r) A steering wheel as outlined in RCW 46.37.375 and WAC 204-10-034;

(s) A suspension as outlined in WAC 204-10-036;

(t) An exhaust system as outlined in WAC 204-10-038; and

(u) A horn that is capable of emitting sound audible under normal conditions from a distance of not less than two hundred feet. The horn or another warning device must not emit an unreasonably loud or harsh sound or whistle. A bell or siren must not be used as a warning device. The device used to actuate the horn must be easily accessible to the driver when operating the vehicle.

(3) A kit vehicle may also be equipped with hoods and bumpers. If this equipment is present, it must meet the following requirements:

(a) Hood latches must be equipped with a primary and secondary latching system to hold the hood in a closed position if the hood is a front opening hood; and

(b) Bumpers must be 4.5 inches in vertical height, centered on the vehicle's centerline, and extend no less than the width of the respective wheel track distances. Bumpers must be horizontal load veering and attach to the frame to effectively transfer energy when impacted. The bumper must be installed in accordance with the bumper heights outlined in WAC 204-10-022. [2009 c 284 § 3.]

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

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

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

(c) For any person to operate or ride upon a motorcycle, motor-driven cycle, or moped on a state highway, county road, or city street unless wearing upon his or her head a motorcycle helmet except when the vehicle is an antique motor-driven cycle or when the vehicle is equipped with all of the following:

(i) Steering wheel;

(ii) Seat belts that conform to standards prescribed under 49 C.F.R. Part 571; and

(iii) Partially or completely enclosed seating area for the driver and passenger that is certified by the manufacturer as meeting the standards prescribed under 49 C.F.R. Sec. 571.216.

The motorcycle helmet neck or chin strap must be fastened securely while the motorcycle, moped, or motor-driven cycle is in motion. Persons operating electric-assisted bicycles and motorized foot scooters shall comply with all laws and regulations related to the use of bicycle helmets;

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

(e) For any person to sell or offer for sale a motorcycle helmet that does not meet the requirements established by this section.

(2) The state patrol may adopt and amend rules concerning standards for glasses, goggles, and face shields.

(3) For purposes of this section, "motorcycle helmet" means a protective covering for the head consisting of a hard

outer shell, padding adjacent to and inside the outer shell, and a neck or chin strap type retention system, with the manufacturer's certification applied in accordance with 49 C.F.R. Sec. 571.218 indicating that the motorcycle helmet meets standards established by the United States department of transportation. [2009 c 275 § 5; 2003 c 197 § 1; 1997 c 328 § 4; 1990 c 270 § 7. Prior: 1987 c 454 § 1; 1987 c 330 § 732; 1986 c 113 § 8; 1982 c 77 § 7; 1977 ex.s. c 355 § 55; 1971 ex.s. c 150 § 1; 1969 c 42 § 1; 1967 c 232 § 4.]

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

Short title—1990 c 270: See RCW 43.70.440.

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

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

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

Maximum height for handlebars: RCW 46.61.611.

Riding on motorcycles: RCW 46.61.610.

Chapter 46.44 RCW
SIZE, WEIGHT, LOAD

Sections

46.44.050 Minimum length of wheelbase.
46.44.110 Liability for damage to highways, bridges, etc.

46.44.050 Minimum length of wheelbase. It shall be unlawful to operate any vehicle upon public highways with a wheelbase between any two axles thereof of less than three feet, six inches when weight exceeds that allowed for one axle under RCW 46.44.042 or 46.44.041. It shall be unlawful to operate any motor vehicle upon the public highways of this state with a wheelbase between the frontmost axle and the rearmost axle of less than three feet, six inches.

For the purposes of this section, wheelbase shall be measured upon a straight line from center to center of the vehicle axles designated. [2009 c 275 § 6; 1979 ex.s. c 213 § 7; 1975-'76 2nd ex.s. c 64 § 12; 1961 c 12 § 46.44.050. Prior: 1941 c 116 § 3; 1937 c 189 § 51; Rem. Supp. 1941 § 6360-51; 1929 c 180 § 3, part; 1927 c 309 § 8, part; 1923 c 181 § 4, part; RRS § 6362-8, part.]

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

46.44.110 Liability for damage to highways, bridges, etc. Any person operating any vehicle or moving any object or conveyance upon any public highway in this state or upon any bridge or elevated structure that is a part of any such public highway is liable for all damages that the public highway, bridge, elevated structure, or other state property may sustain as a result of any illegal operation of the vehicle or the moving of any such object or conveyance or as a result of the operation or moving of any vehicle, object, or conveyance weighing in excess of the legal weight limits allowed by law. This section applies to any person operating any vehicle or moving any object or contrivance in any illegal or negligent manner or without a special permit as provided by law for vehicles, objects, or contrivances that are overweight, overwidth, overheight, or overlength. Any person operating any vehicle is liable for any damage to any public highway, bridge, elevated structure, or other state property sustained as the result of any negligent operation thereof. When the operator is not the owner of the vehicle, object, or contrivance but is operating or moving it with the express or implied permission of the owner, the owner and the operator are jointly and severally liable for any such damage. Such damage to any state highway, structure, or other state property may be recovered in a civil action instituted in the name of the state of Washington by the department of transportation or other affected state agency. Any measure of damage determined by the department of transportation to its highway, bridge, elevated structure, or other property under this section is prima facie the amount of damage caused thereby and is presumed to be the amount recoverable in any civil action therefor. The damages available under this section include the incident response costs, including traffic control, incurred by the department of transportation. [2009 c 393 § 1; 1984 c 7 § 59; 1961 c 12 § 46.44.110. Prior: 1937 c 189 § 57; RRS 6360-57.]

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

Chapter 46.48 RCW
TRANSPORTATION OF HAZARDOUS MATERIALS

Sections

46.48.180 Repealed.

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

Chapter 46.52 RCW
ACCIDENTS—REPORTS—ABANDONED VEHICLES

Sections

46.52.130 Abstract of driving record—Access—Fees—Penalty.

46.52.130 Abstract of driving record—Access—Fees—Penalty. (1) A certified abstract of the driving record shall be furnished only to:

(a) The individual named in the abstract;

(b) An employer or prospective employer or an agent acting on behalf of an employer or prospective employer, or a volunteer organization for which the named individual has submitted an application for a position that could require the transportation of children under eighteen years of age, adults over sixty-five years of age, or persons with mental or physical disabilities;

(c) An employee or agent of a transit authority checking prospective volunteer vanpool drivers for insurance and risk management needs;

(d) The insurance carrier that has insurance in effect covering the employer or a prospective employer;

(e) The insurance carrier that has motor vehicle or life insurance in effect covering the named individual;

(f) The insurance carrier to which the named individual has applied;

(g) An alcohol/drug assessment or treatment agency approved by the department of social and health services, to which the named individual has applied or been assigned for evaluation or treatment;

(h) City and county prosecuting attorneys;

(i) State colleges, universities, or agencies for employment and risk management purposes; or units of local government authorized to self-insure under RCW 48.62.031; or

(j) An employer or prospective employer or volunteer organization, or an agent acting on behalf of an employer or prospective employer or volunteer organization, for employment purposes related to driving by an individual as a condition of that individual's employment or otherwise at the direction of the employer or organization.

(2) Nothing in this section shall be interpreted to prevent a court from providing a copy of the driver's abstract to the individual named in the abstract, provided that the named individual has a pending case in that court for a suspended license violation or an open infraction or criminal case in that court that has resulted in the suspension of the individual's driver's license. A pending case includes criminal cases that have not reached a disposition by plea, stipulation, trial, or amended charge. An open infraction or criminal case includes cases on probation, payment agreement or subject to, or in collections. Courts may charge a reasonable fee for production and copying of the abstract for the individual.

(3) City attorneys and county prosecuting attorneys may provide the driving record to alcohol/drug assessment or treatment agencies approved by the department of social and health services to which the named individual has applied or been assigned for evaluation or treatment.

(4)(a) The director, upon proper request, shall furnish a certified abstract covering the period of not more than the last three years to insurance companies.

(b) The director may enter into a contractual agreement with an insurance company or its agent for the limited purpose of reviewing the driving records of existing policyholders for changes to the record during specified periods of time. The department shall establish a fee for this service, which must be deposited in the highway safety fund. The fee for this service must be set at a level that will not result in a net revenue loss to the state. Any information provided under this subsection must be treated in the same manner and subject to the same restrictions as certified abstracts.

(5) Upon proper request, the director shall furnish a certified abstract covering a period of not more than the last five years to state approved alcohol/drug assessment or treatment agencies, except that the certified abstract shall also include records of alcohol- related offenses as defined in RCW 46.01.260(2) covering a period of not more than the last ten years.

(6) Upon proper request, a certified abstract of the full driving record maintained by the department shall be furnished to a city or county prosecuting attorney, to the individual named in the abstract, to an employer or prospective employer or an agent acting on behalf of an employer or prospective employer of the named individual, or to a volunteer organization for which the named individual has submitted an application for a position that could require the transportation of children under eighteen years of age, adults over sixty-five years of age, or persons with physical or mental disabilities, or to an employee or agent of a transit authority checking prospective volunteer vanpool drivers for insurance and risk management needs.

(7) The abstract, whenever possible, shall include:

(a) An enumeration of motor vehicle accidents in which the person was driving;

(b) The total number of vehicles involved;

(c) Whether the vehicles were legally parked or moving;

(d) Whether the vehicles were occupied at the time of the accident;

(e) Whether the accident resulted in any fatality;

(f) Any reported convictions, forfeitures of bail, or findings that an infraction was committed based upon a violation of any motor vehicle law;

(g) The status of the person's driving privilege in this state; and

(h) Any reports of failure to appear in response to a traffic citation or failure to respond to a notice of infraction served upon the named individual by an arresting officer.

(8) Certified abstracts furnished to prosecutors and alcohol/drug assessment or treatment agencies shall also indicate whether a recorded violation is an alcohol-related offense as defined in RCW 46.01.260(2) that was originally charged as one of the alcohol-related offenses designated in *RCW 46.01.260(2)(b)(i).

(9) The abstract provided to the insurance company shall exclude any information, except that related to the commission of misdemeanors or felonies by the individual, pertaining to law enforcement officers or firefighters as defined in RCW 41.26.030, or any officer of the Washington state patrol, while driving official vehicles in the performance of occupational duty. The abstract provided to the insurance company shall include convictions for RCW 46.61.5249 and 46.61.525 except that the abstract shall report them only as negligent driving without reference to whether they are for first or second degree negligent driving. The abstract provided to the insurance company shall exclude any deferred prosecution under RCW 10.05.060, except that if a person is removed from a deferred prosecution under RCW 10.05.090, the abstract shall show the deferred prosecution as well as the removal.

(10) The director shall collect for each abstract the sum of ten dollars, fifty percent of which shall be deposited in the highway safety fund and fifty percent of which must be deposited according to RCW 46.68.038.

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

(12) Any employer or prospective employer or an agent acting on behalf of an employer or prospective employer, or a volunteer organization for which the named individual has submitted an application for a position that could require the transportation of children under eighteen years of age, adults

over sixty-five years of age, or persons with physical or mental disabilities, receiving the certified abstract shall use it exclusively for his or her own purpose: (a) To determine whether the licensee should be permitted to operate a commercial vehicle or school bus, or operate a vehicle for a volunteer organization for purposes of transporting children under eighteen years of age, adults over sixty-five years of age, or persons with physical or mental disabilities, upon the public highways of this state; or (b) for employment purposes related to driving by an individual as a condition of that individual's employment or otherwise at the direction of the employer or organization, and shall not divulge any information contained in it to a third party.

(13) Any employee or agent of a transit authority receiving a certified abstract for its vanpool program shall use it exclusively for determining whether the volunteer licensee meets those insurance and risk management requirements necessary to drive a vanpool vehicle. The transit authority may not divulge any information contained in the abstract to a third party.

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

(15) Release of a certified abstract of the driving record of an employee, prospective employee, or prospective volunteer requires a statement signed by: (a) The employee, prospective employee, or prospective volunteer that authorizes the release of the record, and (b) the employer or volunteer organization attesting that the information is necessary: (i) To determine whether the licensee should be employed to operate a commercial vehicle or school bus, or operate a vehicle for a volunteer organization for purposes of transporting children under eighteen years of age, adults over sixty-five years of age, or persons with physical or mental disabilities, upon the public highways of this state; or (ii) for employment purposes related to driving by an individual as a condition of that individual's employment or otherwise at the direction of the employer or organization. If the employer or prospective employer authorizes an agent to obtain this information on their behalf, this must be noted in the statement. This subsection does not apply to entities identified in subsection (1)(i) of this section.

(16) Any negligent violation of this section is a gross misdemeanor.

(17) Any intentional violation of this section is a class C felony. [2009 c 276 § 1; 2008 c 253 § 1; 2007 c 424 § 3; 2004 c 49 § 1; 2003 c 367 § 1. Prior: 2002 c 352 § 20; 2002 c 221 § 1; 2001 c 309 § 1; 1998 c 165 § 11; 1997 c 66 § 12; prior: 1996 c 307 § 4; 1996 c 183 § 2; 1994 c 275 § 16; 1991 c 243 § 1; 1989 c 178 § 24; prior: 1987 1st ex.s c 9 § 2; 1987 c 397 § 2; 1987 c 181 § 1; 1986 c 74 § 1; 1985 ex.s. c 1 § 11; 1979 ex.s. c 136 § 84; 1977 ex.s. c 356 § 2; 1977 ex.s. c 140 § 1; 1973 1st ex.s. c 37 § 1; 1969 ex.s. c 40 § 3; 1967 c 174 § 2; 1967 c 32 § 63; 1963 c 169 § 65; 1961 ex.s. c 21 § 27.]

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

***Reviser's note:** RCW 46.01.260 was amended by 2009 c 276 § 2, which deleted subsection (2)(b)(i). The reference should be to RCW 46.01.260(2)(a).

Effective date—2008 c 253: "This act takes effect August 1, 2008." [2008 c 253 § 2.]

Effective date—2007 c 424: See note following RCW 46.20.293.

Effective dates—2002 c 352: See note following RCW 46.09.070.

Effective date—1998 c 165 §§ 8-14: See note following RCW 46.52.070.

Short title—1998 c 165: See note following RCW 43.59.010.

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

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

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

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

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

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

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

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

Severability—1963 c 169: See RCW 46.29.910.

Abstract of driving record to be furnished: RCW 46.29.050.

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

Chapter 46.55 RCW
TOWING AND IMPOUNDMENT

Sections

46.55.120 Redemption of vehicles—Sale of unredeemed property—Improper impoundment.

46.55.120 Redemption of vehicles—Sale of unredeemed property—Improper impoundment. (1) Vehicles or other items of personal property registered or titled with the department that are impounded by registered tow truck operators pursuant to RCW 46.55.080, 46.55.085, 46.55.113, or 9A.88.140 may be redeemed only under the following circumstances:

(a) Only the legal owner, the registered owner, a person authorized in writing by the registered owner or the vehicle's insurer, a person who is determined and verified by the operator to have the permission of the registered owner of the vehicle or other item of personal property registered or titled with the department, or one who has purchased a vehicle or item of personal property registered or titled with the department from the registered owner who produces proof of ownership or written authorization and signs a receipt therefor, may redeem an impounded vehicle or items of personal property registered or titled with the department. In addition, a vehicle impounded because the operator is in violation of RCW 46.20.342(1)(c) shall not be released until a person eligible to redeem it under this subsection (1)(a) satisfies the requirements of (e) of this subsection, including paying all towing, removal, and storage fees, notwithstanding the fact that the hold was ordered by a government agency. If the department's records show that the operator has been convicted of a violation of RCW 46.20.342 or a similar local ordinance within the past five years, the vehicle may be held

for up to thirty days at the written direction of the agency ordering the vehicle impounded. A vehicle impounded because the operator is arrested for a violation of RCW 46.20.342 may be released only pursuant to a written order from the agency that ordered the vehicle impounded or from the court having jurisdiction. An agency shall issue a written order to release pursuant to a provision of an applicable state agency rule or local ordinance authorizing release on the basis of the following:

(i) Economic or personal hardship to the spouse of the operator, taking into consideration public safety factors, including the operator's criminal history and driving record; or

(ii) The owner of the vehicle was not the driver, the owner did not know that the driver's license was suspended or revoked, and the owner has not received a prior release under this subsection or RCW 46.55.113(3).

In order to avoid discriminatory application, other than for the reasons for release set forth in (a)(i) and (ii) of this subsection, an agency shall, under a provision of an applicable state agency rule or local ordinance, deny release in all other circumstances without discretion.

If a vehicle is impounded because the operator is in violation of RCW 46.20.342(1) (a) or (b), the vehicle may be held for up to thirty days at the written direction of the agency ordering the vehicle impounded. However, if the department's records show that the operator has been convicted of a violation of RCW 46.20.342(1) (a) or (b) or a similar local ordinance within the past five years, the vehicle may be held at the written direction of the agency ordering the vehicle impounded for up to sixty days, and for up to ninety days if the operator has two or more such prior offenses. If a vehicle is impounded because the operator is arrested for a violation of RCW 46.20.342, the vehicle may not be released until a person eligible to redeem it under this subsection (1)(a) satisfies the requirements of (e) of this subsection, including paying all towing, removal, and storage fees, notwithstanding the fact that the hold was ordered by a government agency.

(b) If the vehicle is directed to be held for a suspended license impound, a person who desires to redeem the vehicle at the end of the period of impound shall within five days of the impound at the request of the tow truck operator pay a security deposit to the tow truck operator of not more than one-half of the applicable impound storage rate for each day of the proposed suspended license impound. The tow truck operator shall credit this amount against the final bill for removal, towing, and storage upon redemption. The tow truck operator may accept other sufficient security in lieu of the security deposit. If the person desiring to redeem the vehicle does not pay the security deposit or provide other security acceptable to the tow truck operator, the tow truck operator may process and sell at auction the vehicle as an abandoned vehicle within the normal time limits set out in RCW 46.55.130(1). The security deposit required by this section may be paid and must be accepted at any time up to twenty-four hours before the beginning of the auction to sell the vehicle as abandoned. The registered owner is not eligible to purchase the vehicle at the auction, and the tow truck operator shall sell the vehicle to the highest bidder who is not the registered owner.

(c) Notwithstanding (b) of this subsection, a rental car business may immediately redeem a rental vehicle it owns by payment of the costs of removal, towing, and storage, whereupon the vehicle will not be held for a suspended license impound.

(d) Notwithstanding (b) of this subsection, a motor vehicle dealer or lender with a perfected security interest in the vehicle may redeem or lawfully repossess a vehicle immediately by payment of the costs of removal, towing, and storage, whereupon the vehicle will not be held for a suspended license impound. A motor vehicle dealer or lender with a perfected security interest in the vehicle may not knowingly and intentionally engage in collusion with a registered owner to repossess and then return or resell a vehicle to the registered owner in an attempt to avoid a suspended license impound. However, this provision does not preclude a vehicle dealer or a lender with a perfected security interest in the vehicle from repossessing the vehicle and then selling, leasing, or otherwise disposing of it in accordance with chapter 62A.9A RCW, including providing redemption rights to the debtor under RCW 62A.9A-623. If the debtor is the registered owner of the vehicle, the debtor's right to redeem the vehicle under chapter 62A.9A RCW is conditioned upon the debtor obtaining and providing proof from the impounding authority or court having jurisdiction that any fines, penalties, and forfeitures owed by the registered owner, as a result of the suspended license impound, have been paid, and proof of the payment must be tendered to the vehicle dealer or lender at the time the debtor tenders all other obligations required to redeem the vehicle. Vehicle dealers or lenders are not liable for damages if they rely in good faith on an order from the impounding agency or a court in releasing a vehicle held under a suspended license impound.

(e) The vehicle or other item of personal property registered or titled with the department shall be released upon the presentation to any person having custody of the vehicle of commercially reasonable tender sufficient to cover the costs of towing, storage, or other services rendered during the course of towing, removing, impounding, or storing any such vehicle, with credit being given for the amount of any security deposit paid under (b) of this subsection. In addition, if a vehicle is impounded because the operator was arrested for a violation of RCW 46.20.342 or 46.20.345 and was being operated by the registered owner when it was impounded under local ordinance or agency rule, it must not be released to any person until the registered owner establishes with the agency that ordered the vehicle impounded or the court having jurisdiction that any penalties, fines, or forfeitures owed by him or her have been satisfied. Registered tow truck operators are not liable for damages if they rely in good faith on an order from the impounding agency or a court in releasing a vehicle held under a suspended license impound. Commercially reasonable tender shall include, without limitation, cash, major bank credit cards issued by financial institutions, or personal checks drawn on Washington state branches of financial institutions if accompanied by two pieces of valid identification, one of which may be required by the operator to have a photograph. If the towing firm cannot determine through the customer's bank or a check verification service that the presented check would be paid by the bank or guaranteed by the service, the towing firm may refuse to accept

the check. Any person who stops payment on a personal check or credit card, or does not make restitution within ten days from the date a check becomes insufficient due to lack of funds, to a towing firm that has provided a service pursuant to this section or in any other manner defrauds the towing firm in connection with services rendered pursuant to this section shall be liable for damages in the amount of twice the towing and storage fees, plus costs and reasonable attorney's fees.

(2)(a) The registered tow truck operator shall give to each person who seeks to redeem an impounded vehicle, or item of personal property registered or titled with the department, written notice of the right of redemption and opportunity for a hearing, which notice shall be accompanied by a form to be used for requesting a hearing, the name of the person or agency authorizing the impound, and a copy of the towing and storage invoice. The registered tow truck operator shall maintain a record evidenced by the redeeming person's signature that such notification was provided.

(b) Any person seeking to redeem an impounded vehicle under this section has a right to a hearing in the district or municipal court for the jurisdiction in which the vehicle was impounded to contest the validity of the impoundment or the amount of towing and storage charges. The district court has jurisdiction to determine the issues involving all impoundments including those authorized by the state or its agents. The municipal court has jurisdiction to determine the issues involving impoundments authorized by agents of the municipality. Any request for a hearing shall be made in writing on the form provided for that purpose and must be received by the appropriate court within ten days of the date the opportunity was provided for in subsection (2)(a) of this section and more than five days before the date of the auction. At the time of the filing of the hearing request, the petitioner shall pay to the court clerk a filing fee in the same amount required for the filing of a suit in district court. If the hearing request is not received by the court within the ten-day period, the right to a hearing is waived and the registered owner is liable for any towing, storage, or other impoundment charges permitted under this chapter. Upon receipt of a timely hearing request, the court shall proceed to hear and determine the validity of the impoundment.

(3)(a) The court, within five days after the request for a hearing, shall notify the registered tow truck operator, the person requesting the hearing if not the owner, the registered and legal owners of the vehicle or other item of personal property registered or titled with the department, and the person or agency authorizing the impound in writing of the hearing date and time.

(b) At the hearing, the person or persons requesting the hearing may produce any relevant evidence to show that the impoundment, towing, or storage fees charged were not proper. The court may consider a written report made under oath by the officer who authorized the impoundment in lieu of the officer's personal appearance at the hearing.

(c) At the conclusion of the hearing, the court shall determine whether the impoundment was proper, whether the towing or storage fees charged were in compliance with the posted rates, and who is responsible for payment of the fees. The court may not adjust fees or charges that are in compliance with the posted or contracted rates.

(d) If the impoundment is found proper, the impoundment, towing, and storage fees as permitted under this chapter together with court costs shall be assessed against the person or persons requesting the hearing, unless the operator did not have a signed and valid impoundment authorization from a private property owner or an authorized agent.

(e) If the impoundment is determined to be in violation of this chapter, then the registered and legal owners of the vehicle or other item of personal property registered or titled with the department shall bear no impoundment, towing, or storage fees, and any security shall be returned or discharged as appropriate, and the person or agency who authorized the impoundment shall be liable for any towing, storage, or other impoundment fees permitted under this chapter. The court shall enter judgment in favor of the registered tow truck operator against the person or agency authorizing the impound for the impoundment, towing, and storage fees paid. In addition, the court shall enter judgment in favor of the registered and legal owners of the vehicle, or other item of personal property registered or titled with the department, for the amount of the filing fee required by law for the impound hearing petition as well as reasonable damages for loss of the use of the vehicle during the time the same was impounded against the person or agency authorizing the impound. However, if an impoundment arising from an alleged violation of RCW 46.20.342 or 46.20.345 is determined to be in violation of this chapter, then the law enforcement officer directing the impoundment and the government employing the officer are not liable for damages if the officer relied in good faith and without gross negligence on the records of the department in ascertaining that the operator of the vehicle had a suspended or revoked driver's license. If any judgment entered is not paid within fifteen days of notice in writing of its entry, the court shall award reasonable attorneys' fees and costs against the defendant in any action to enforce the judgment. Notice of entry of judgment may be made by registered or certified mail, and proof of mailing may be made by affidavit of the party mailing the notice. Notice of the entry of the judgment shall read essentially as follows:

TO: . . . . . .
YOU ARE HEREBY NOTIFIED JUDGMENT was entered against you in the . . . . . Court located at . . . . . in the sum of $. . . . ., in an action entitled . . . . . ., Case No. . . . . YOU ARE FURTHER NOTIFIED that attorneys fees and costs will be awarded against you under RCW . . . if the judgment is not paid within 15 days of the date of this notice.
DATED this . . . . day of . . . . . ., (year) . . .
Signature . . . . . .
Typed name and address
of party mailing notice

(4) Any impounded abandoned vehicle or item of personal property registered or titled with the department that is not redeemed within fifteen days of mailing of the notice of custody and sale as required by RCW 46.55.110(3) shall be sold at public auction in accordance with all the provisions and subject to all the conditions of RCW 46.55.130. A vehicle or item of personal property registered or titled with the department may be redeemed at any time before the start of the auction upon payment of the applicable towing and stor-

age fees. [2009 c 387 § 3; 2004 c 250 § 1; 2003 c 177 § 2; 2000 c 193 § 1. Prior: 1999 c 398 § 7; 1999 c 327 § 5; 1998 c 203 § 5; 1996 c 89 § 2; 1995 c 360 § 7; 1993 c 121 § 3; 1989 c 111 § 11; 1987 c 311 § 12; 1985 c 377 § 12.]

Findings—Intent—1999 c 327: See note following RCW 9A.88.130.

Finding—1998 c 203: See note following RCW 46.55.105.

Chapter 46.61 RCW
RULES OF THE ROAD

Sections

46.61.480 Determination of maximum speed on nonlimited access state highways within tribal reservation boundaries.
46.61.5058 Alcohol violators—Vehicle seizure and forfeiture.
46.61.527 Roadway construction zones.
46.61.560 Stopping, standing, or parking outside business or residence districts.
46.61.610 Riding on motorcycles.
46.61.688 Safety belts, use required—Penalties—Exemptions.
46.61.710 Mopeds, EPAMDs, electric-assisted bicycles, motorized foot scooters—General requirements and operation.

46.61.480 Determination of maximum speed on nonlimited access state highways within tribal reservation boundaries. (1) Tribal authorities, within their reservation boundaries, may determine based on an engineering and traffic investigation that the maximum speed permitted under RCW 46.61.400 or 46.61.405 is greater or less than is reasonable or safe under the conditions found to exist upon a nonlimited access state highway or part of a nonlimited access state highway. Then, the tribal authority may determine and declare a reasonable and safe maximum limit thereon which:

(a) Decreases the limit at intersections;

(b) Increases the limit, not exceeding sixty miles per hour; or

(c) Decreases the limit, not lower than twenty miles per hour.

(2) Any alteration by tribal authorities of maximum limits on a nonlimited access state highway is not effective until the alteration has been approved by the secretary of transportation and appropriate signs giving notice of the alteration have been posted. In the case of an alteration by tribal authorities of maximum limits on a nonlimited access state highway that is also part of a city or town street or county road within tribal reservation boundaries, the alteration is not effective until that alteration has also been approved by the applicable local authority. [2009 c 383 § 1.]

46.61.5058 Alcohol violators—Vehicle seizure and forfeiture. (1) Upon the arrest of a person or upon the filing of a complaint, citation, or information in a court of competent jurisdiction, based upon probable cause to believe that a person has violated RCW 46.61.502 or 46.61.504 or any similar municipal ordinance, if such person has a prior offense within seven years as defined in RCW 46.61.5055, and where the person has been provided written notice that any transfer, sale, or encumbrance of such person's interest in the vehicle over which that person was actually driving or had physical control when the violation occurred, is unlawful pending either acquittal, dismissal, sixty days after conviction, or other termination of the charge, such person shall be prohibited from encumbering, selling, or transferring his or her interest in such vehicle, except as otherwise provided in (a), (b), and (c) of this subsection, until either acquittal, dismissal, sixty days after conviction, or other termination of the charge. The prohibition against transfer of title shall not be stayed pending the determination of an appeal from the conviction.

(a) A vehicle encumbered by a bona fide security interest may be transferred to the secured party or to a person designated by the secured party;

(b) A leased or rented vehicle may be transferred to the lessor, rental agency, or to a person designated by the lessor or rental agency; and

(c) A vehicle may be transferred to a third party or a vehicle dealer who is a bona fide purchaser or may be subject to a bona fide security interest in the vehicle unless it is established that (i) in the case of a purchase by a third party or vehicle dealer, such party or dealer had actual notice that the vehicle was subject to the prohibition prior to the purchase, or (ii) in the case of a security interest, the holder of the security interest had actual notice that the vehicle was subject to the prohibition prior to the encumbrance of title.

(2) On conviction for a violation of either RCW 46.61.502 or 46.61.504 or any similar municipal ordinance where the person convicted has a prior offense within seven years as defined in RCW 46.61.5055, the motor vehicle the person was driving or over which the person had actual physical control at the time of the offense, if the person has a financial interest in the vehicle, is subject to seizure and forfeiture pursuant to this section.

(3) A vehicle subject to forfeiture under this chapter may be seized by a law enforcement officer of this state upon process issued by a court of competent jurisdiction. Seizure of a vehicle may be made without process if the vehicle subject to seizure has been the subject of a prior judgment in favor of the state in a forfeiture proceeding based upon this section.

(4) Seizure under subsection (3) of this section automatically commences proceedings for forfeiture. The law enforcement agency under whose authority the seizure was made shall cause notice of the seizure and intended forfeiture of the seized vehicle to be served within fifteen days after the seizure on the owner of the vehicle seized, on the person in charge of the vehicle, and on any person having a known right or interest in the vehicle, including a community property interest. The notice of seizure may be served by any method authorized by law or court rule, including but not limited to service by certified mail with return receipt requested. Service by mail is complete upon mailing within the fifteen-day period after the seizure. Notice of seizure in the case of property subject to a security interest that has been perfected on a certificate of title shall be made by service upon the secured party or the secured party's assignee at the address shown on the financing statement or the certificate of title.

(5) If no person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of the seized vehicle within forty-five days of the seizure, the vehicle is deemed forfeited.

(6) If a person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of the seized vehicle within forty-five days of the seizure, the law enforcement agency shall give the person

or persons a reasonable opportunity to be heard as to the claim or right. The hearing shall be before the chief law enforcement officer of the seizing agency or the chief law enforcement officer's designee, except where the seizing agency is a state agency as defined in RCW 34.12.020, the hearing shall be before the chief law enforcement officer of the seizing agency or an administrative law judge appointed under chapter 34.12 RCW, except that any person asserting a claim or right may remove the matter to a court of competent jurisdiction. Removal may only be accomplished according to the rules of civil procedure. The person seeking removal of the matter must serve process against the state, county, political subdivision, or municipality that operates the seizing agency, and any other party of interest, in accordance with RCW 4.28.080 or 4.92.020, within forty-five days after the person seeking removal has notified the seizing law enforcement agency of the person's claim of ownership or right to possession. The court to which the matter is to be removed shall be the district court when the aggregate value of the vehicle is within the jurisdictional limit set forth in RCW 3.66.020. A hearing before the seizing agency and any appeal therefrom shall be under Title 34 RCW. In a court hearing between two or more claimants to the vehicle involved, the prevailing party shall be entitled to a judgment for costs and reasonable attorneys' fees. The burden of producing evidence shall be upon the person claiming to be the legal owner or the person claiming to have the lawful right to possession of the vehicle. The seizing law enforcement agency shall promptly return the vehicle to the claimant upon a determination by the administrative law judge or court that the claimant is the present legal owner under Title 46 RCW or is lawfully entitled to possession of the vehicle.

(7) When a vehicle is forfeited under this chapter the seizing law enforcement agency may sell the vehicle, retain it for official use, or upon application by a law enforcement agency of this state release the vehicle to that agency for the exclusive use of enforcing this title; provided, however, that the agency shall first satisfy any bona fide security interest to which the vehicle is subject under subsection (1)(a) or (c) of this section.

(8) When a vehicle is forfeited, the seizing agency shall keep a record indicating the identity of the prior owner, if known, a description of the vehicle, the disposition of the vehicle, the value of the vehicle at the time of seizure, and the amount of proceeds realized from disposition of the vehicle.

(9) Each seizing agency shall retain records of forfeited vehicles for at least seven years.

(10) Each seizing agency shall file a report including a copy of the records of forfeited vehicles with the state treasurer each calendar quarter.

(11) The quarterly report need not include a record of a forfeited vehicle that is still being held for use as evidence during the investigation or prosecution of a case or during the appeal from a conviction.

(12) By January 31st of each year, each seizing agency shall remit to the state treasurer an amount equal to ten percent of the net proceeds of vehicles forfeited during the preceding calendar year. Money remitted shall be deposited in the state general fund.

(13) The net proceeds of a forfeited vehicle is the value of the forfeitable interest in the vehicle after deducting the cost of satisfying a bona fide security interest to which the vehicle is subject at the time of seizure; and in the case of a sold vehicle, after deducting the cost of sale, including reasonable fees or commissions paid to independent selling agents.

(14) The value of a sold forfeited vehicle is the sale price. The value of a retained forfeited vehicle is the fair market value of the vehicle at the time of seizure, determined when possible by reference to an applicable commonly used index, such as the index used by the department of licensing. A seizing agency may, but need not, use an independent qualified appraiser to determine the value of retained vehicles. If an appraiser is used, the value of the vehicle appraised is net of the cost of the appraisal. [2009 c 479 § 38; 1998 c 207 § 2; 1995 c 332 § 6; 1994 c 139 § 1.]

Effective date—2009 c 479: See note following RCW 2.56.030.

Effective date—1998 c 207: See note following RCW 46.61.5055.

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

46.61.527 Roadway construction zones. (1) The secretary of transportation shall adopt standards and specifications for the use of traffic control devices in roadway construction zones on state highways. A roadway construction zone is an area where construction, repair, or maintenance work is being conducted by public employees or private contractors, on or adjacent to any public roadway. For the purpose of the pilot program referenced in section 218(2), chapter 470, Laws of 2009, during the 2009-2011 fiscal biennium, a roadway construction zone includes areas where public employees or private contractors are not present but where a driving condition exists that would make it unsafe to drive at higher speeds, such as, when the department is redirecting or realigning lanes on or adjacent to any public roadway pursuant to ongoing construction.

(2) No person may drive a vehicle in a roadway construction zone at a speed greater than that allowed by traffic control devices.

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

(4) A person who drives a vehicle in a roadway construction zone in such a manner as to endanger or be likely to endanger any persons or property, or who removes, evades, or intentionally strikes a traffic safety or control device is guilty of reckless endangerment of roadway workers. A violation of this subsection is a gross misdemeanor punishable under chapter 9A.20 RCW.

(5) The department shall suspend for sixty days the license or permit to drive or a nonresident driving privilege of a person convicted of reckless endangerment of roadway workers. [2009 c 470 § 713; 1994 c 141 § 1.]

Effective date—2009 c 470: See note following RCW 46.68.170.

Effective date—1994 c 141: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 28, 1994]." [1994 c 141 § 3.]

46.61.560 Stopping, standing, or parking outside business or residence districts. (1) Outside of incorporated cities and towns no person may stop, park, or leave standing any vehicle, whether attended or unattended, upon the roadway.

(2) Subsection (1) of this section and RCW 46.61.570 and 46.61.575 do not apply to the driver of any vehicle that is disabled in such manner and to such extent that it is impossible to avoid stopping and temporarily leaving the vehicle in such position. The driver shall nonetheless arrange for the prompt removal of the vehicle as required by RCW 46.61.590.

(3) Subsection (1) of this section does not apply to the driver of a public transit vehicle who temporarily stops the vehicle upon the roadway for the purpose of and while actually engaged in receiving or discharging passengers at a marked transit vehicle stop zone approved by the state department of transportation or a county upon highways under their respective jurisdictions. However, public transportation service providers, including private, nonprofit transportation providers regulated under chapter 81.66 RCW, may allow the driver of a transit vehicle to stop upon the roadway momentarily to receive or discharge passengers at an unmarked stop zone only under the following circumstances: (a) The driver stops the vehicle in a safe and practicable position; (b) the driver activates four-way flashing lights; and (c) the driver stops at a portion of the highway with an unobstructed view, for an adequate distance so as to not create a hazard, for other drivers.

(4) Subsection (1) of this section and RCW 46.61.570 and 46.61.575 do not apply to the driver of a solid waste collection company or recycling company vehicle who temporarily stops the vehicle as close as practical to the right edge of the right-hand shoulder of the roadway or right edge of the roadway if no shoulder exists for the purpose of and while actually engaged in the collection of solid waste or recyclables, or both, under chapters 81.77, 35.21, and 35A.21 RCW or by contract under RCW 36.58.040. [2009 c 274 § 1; 1991 c 319 § 408; 1984 c 7 § 72; 1979 ex.s. c 178 § 20; 1977 c 24 § 2; 1965 ex.s. c 155 § 64.]

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

Severability—Part headings not law—1991 c 319: See RCW 70.95F.900 and 70.95F.901.

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

Severability—1979 ex.s. c 178: See note following RCW 46.61.590.

Limited access highways: RCW 47.52.120.

Unattended motor vehicles: RCW 46.61.600.

46.61.610 Riding on motorcycles. A person operating a motorcycle shall ride only upon the permanent and regular seat attached thereto, and such operator shall not carry any other person nor shall any other person ride on a motorcycle unless such motorcycle is designed to carry more than one person, in which event a passenger may ride upon the permanent and regular seat if designed for two persons, or upon another seat firmly attached to the motorcycle at the rear or side of the operator. However, the motorcycle must contain foot pegs or be equipped with an additional bucket seat and seat belt meeting standards prescribed under 49 C.F.R. Part 571 for each person such motorcycle is designed to carry. [2009 c 275 § 7; 1975 c 62 § 37; 1967 c 232 § 5; 1965 ex.s. c 155 § 70.]

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

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

Equipment regulations for motorcycles, motor-driven cycles, mopeds, or electric-assisted bicycles: RCW 46.37.530, 46.37.535.

Mopeds: RCW 46.16.630, 46.61.710, 46.61.720.

46.61.688 Safety belts, use required—Penalties—Exemptions. (1) For the purposes of this section, "motor vehicle" includes:

(a) "Buses," meaning motor vehicles with motive power, except trailers, designed to carry more than ten passengers;

(b) "Medium-speed electric vehicle" meaning a self-propelled, electrically powered four-wheeled motor vehicle, equipped with a roll cage or crush-proof body design, whose speed attainable in one mile is more than thirty miles per hour but not more than thirty-five miles per hour and otherwise meets or exceeds the federal regulations set forth in 49 C.F.R. Sec. 571.500;

(c) "Motorcycle," meaning a three-wheeled motor vehicle that is designed (i) so that the driver rides on a seat in a partially or completely enclosed seating area that is equipped with safety belts and (ii) to be steered with a steering wheel;

(d) "Multipurpose passenger vehicles," meaning motor vehicles with motive power, except trailers, designed to carry ten persons or less that are constructed either on a truck chassis or with special features for occasional off-road operation;

(e) "Neighborhood electric vehicle," meaning a self-propelled, electrically powered four-wheeled motor vehicle whose speed attainable in one mile is more than twenty miles per hour and not more than twenty-five miles per hour and conforms to federal regulations under 49 C.F.R. Sec. 571.500;

(f) "Passenger cars," meaning motor vehicles with motive power, except multipurpose passenger vehicles, motorcycles, or trailers, designed for carrying ten passengers or less; and

(g) "Trucks," meaning motor vehicles with motive power, except trailers, designed primarily for the transportation of property.

(2)(a) This section only applies to:

(i) Motor vehicles that meet the manual seat belt safety standards as set forth in 49 C.F.R. Sec. 571.208;

(ii) Motorcycles, when equipped with safety belts that meet the standards set forth in 49 C.F.R. Part 571; and

(iii) Neighborhood electric vehicles and medium-speed electric vehicles that meet the seat belt standards as set forth in 49 C.F.R. Sec. 571.500.

(b) This section does not apply to a vehicle occupant for whom no safety belt is available when all designated seating positions as required under 49 C.F.R. Part 571 are occupied.

(3) Every person sixteen years of age or older operating or riding in a motor vehicle shall wear the safety belt assembly in a properly adjusted and securely fastened manner.

(4) No person may operate a motor vehicle unless all child passengers under the age of sixteen years are either: (a) Wearing a safety belt assembly or (b) are securely fastened into an approved child restraint device.

(5) A person violating this section shall be issued a notice of traffic infraction under chapter 46.63 RCW. A finding that a person has committed a traffic infraction under this section shall be contained in the driver's abstract but shall not be available to insurance companies or employers.

(6) Failure to comply with the requirements of this section does not constitute negligence, nor may failure to wear a safety belt assembly be admissible as evidence of negligence in any civil action.

(7) This section does not apply to an operator or passenger who possesses written verification from a licensed physician that the operator or passenger is unable to wear a safety belt for physical or medical reasons.

(8) The state patrol may adopt rules exempting operators or occupants of farm vehicles, construction equipment, and vehicles that are required to make frequent stops from the requirement of wearing safety belts. [2009 c 275 § 8; 2007 c 510 § 5; 2003 c 353 § 4; 2002 c 328 § 2; (2002 c 328 § 1 expired July 1, 2002); 2000 c 190 § 3; 1990 c 250 § 58; 1986 c 152 § 1.]

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

Effective date—2007 c 510: See note following RCW 46.04.320.

Effective date—2003 c 353: See note following RCW 46.04.320.

Expiration date—2002 c 328 § 1: "Section 1 of this act expires July 1, 2002." [2002 c 328 § 3.]

Effective date—2002 c 328 § 2: "Section 2 of this act takes effect July 1, 2002." [2002 c 328 § 4.]

Intent—Short title—Effective date—2000 c 190: See notes following RCW 46.61.687.

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

Study of effectiveness—1986 c 152: "The traffic safety commission shall undertake a study of the effectiveness of section 1 of this act and shall report its finding to the legislative transportation committee by January 1, 1989." [1986 c 152 § 3.]

Physicians—Immunity from liability regarding safety belts: RCW 4.24.235.

Seat belts and shoulder harnesses, required equipment: RCW 46.37.510.

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

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

(3) Operation of a moped, electric personal assistive mobility device, motorized foot scooter, or an electric-assisted bicycle on a fully controlled limited access highway is unlawful. Operation of a moped, motorized foot scooter, or an electric-assisted bicycle on a sidewalk is unlawful.

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

(5) Subsections (1), (2), and (4) of this section do not apply to electric-assisted bicycles. Electric-assisted bicycles and motorized foot scooters may have access to highways, other than limited access highways, of the state to the same extent as bicycles. Subject to subsection (6) of this section, electric-assisted bicycles and motorized foot scooters may be operated on a multipurpose trail or bicycle lane, but local jurisdictions may restrict or otherwise limit the access of electric-assisted bicycles and motorized foot scooters, and state agencies may regulate the use of motorized foot scooters on facilities and properties under their jurisdiction and control.

(6) Subsections (1) and (4) of this section do not apply to motorized foot scooters. Subsection (2) of this section applies to motorized foot scooters when the bicycle path, trail, bikeway, equestrian trail, or hiking or recreational trail was built or is maintained with federal highway transportation funds. Additionally, any new trail or bicycle path or readily identifiable existing trail or bicycle path not built or maintained with federal highway transportation funds may be used by persons operating motorized foot scooters only when appropriately signed.

(7) A person operating an electric personal assistive mobility device (EPAMD) shall obey all speed limits and shall yield the right-of-way to pedestrians and human-powered devices at all times. An operator must also give an audible signal before overtaking and passing a pedestrian. Except for the limitations of this subsection, persons operating an EPAMD have all the rights and duties of a pedestrian.

(8) The use of an EPAMD may be regulated in the following circumstances:

(a) A municipality and the department of transportation may prohibit the operation of an EPAMD on public highways within their respective jurisdictions where the speed limit is greater than twenty-five miles per hour;

(b) A municipality may restrict the speed of an EPAMD in locations with congested pedestrian or nonmotorized traffic and where there is significant speed differential between pedestrians or nonmotorized traffic and EPAMD operators. The areas in this subsection must be designated by the city engineer or designee of the municipality. Municipalities shall not restrict the speed of an EPAMD in the entire community or in areas in which there is infrequent pedestrian traffic;

(c) A state agency or local government may regulate the operation of an EPAMD within the boundaries of any area used for recreation, open space, habitat, trails, or conservation purposes. [2009 c 275 § 9; 2003 c 353 § 10; 2002 c 247 § 7; 1997 c 328 § 5; 1979 ex.s. c 213 § 8.]

Effective date—2003 c 353: See note following RCW 46.04.320.

Legislative review—2002 c 247: See note following RCW 46.04.1695.

Chapter 46.63 RCW
DISPOSITION OF TRAFFIC INFRACTIONS

Sections

46.63.020 Violations as traffic infractions—Exceptions. *(Effective July 1, 2010.)*
46.63.110 Monetary penalties.
46.63.160 Toll collection systems—Photo enforcement systems.
46.63.170 Automated traffic safety cameras—Definition.

46.63.020 Violations as traffic infractions—Exceptions. ***(Effective July 1, 2010.)*** Failure to perform any act required or the performance of any act prohibited by this title or an equivalent administrative regulation or local law, ordinance, regulation, or resolution relating to traffic including

parking, standing, stopping, and pedestrian offenses, is designated as a traffic infraction and may not be classified as a criminal offense, except for an offense contained in the following provisions of this title or a violation of an equivalent administrative regulation or local law, ordinance, regulation, or resolution:

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

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

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

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

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

(6) RCW 46.16.010 relating to the nonpayment of taxes and fees by failure to register a vehicle and falsifying residency when registering a motor vehicle;

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

(8) RCW 46.16.160 relating to vehicle trip permits;

(9) RCW 46.16.381(2) relating to knowingly providing false information in conjunction with an application for a special placard or license plate for disabled persons' parking;

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

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

(12) RCW 46.20.0921 relating to the unlawful possession and use of a driver's license;

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

(14) RCW 46.20.345 relating to the operation of a motor vehicle with a suspended or revoked license;

(15) RCW 46.20.410 relating to the violation of restrictions of an occupational driver's license, temporary restricted driver's license, or ignition interlock driver's license;

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

(17) RCW 46.20.750 relating to circumventing an ignition interlock device;

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

(19) Chapter 46.29 RCW relating to financial responsibility;

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

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

(22) RCW 46.37.650 relating to the sale, resale, distribution, or installation of a previously deployed air bag;

(23) RCW 46.37.671 through 46.37.675 relating to signal preemption devices;

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

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

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

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

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

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

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

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

(32) RCW 46.55.300 relating to vehicle immobilization;

(33) RCW 46.61.015 relating to obedience to police officers, flaggers, or firefighters;

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

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

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

(37) RCW 46.61.500 relating to reckless driving;

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

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

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

(41) RCW 46.61.522 relating to vehicular assault;

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

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

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

(45) RCW 46.61.655(7) (a) and (b) relating to failure to secure a load;

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

(47) RCW 46.61.740 relating to theft of motor vehicle fuel;

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

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

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

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

(52) RCW 46.35.030 relating to recording device information;

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

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

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

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

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

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

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

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

(61) RCW 46.87.290 relating to operation of an unregistered or unlicensed vehicle under chapter 46.87 RCW. [2009 c 485 § 6; 2008 c 282 § 11. Prior: 2005 c 431 § 2; 2005 c 323 § 3; 2005 c 183 § 10; 2004 c 95 § 14; 2003 c 33 § 4; 2001 c 325 § 4; 1999 c 86 § 6; 1998 c 294 § 3; prior: 1997 c 229 § 13; 1997 c 66 § 8; prior: 1996 c 307 § 6; 1996 c 287 § 7; 1996 c 93 § 3; 1996 c 87 § 21; 1996 c 31 § 3; prior: 1995 1st sp.s. c 16 § 1; 1995 c 332 § 16; 1995 c 256 § 25; prior: 1994 c 275 § 33; 1994 c 141 § 2; 1993 c 501 § 8; 1992 c 32 § 4; 1991 c 339 § 27; prior: 1990 c 250 § 59; 1990 c 95 § 3; prior: 1989 c 353 § 8; 1989 c 178 § 27; 1989 c 111 § 20; prior: 1987 c 388 § 11; 1987 c 247 § 6; 1987 c 244 § 55; 1987 c 181 § 2; 1986 c 186 § 3; prior: 1985 c 377 § 28; 1985 c 353 § 2; 1985 c 302 § 7; 1983 c 164 § 6; 1982 c 10 § 12; prior: 1981 c 318 § 2; 1981 c 19 § 1; 1980 c 148 § 7; 1979 ex.s. c 136 § 2.]

Effective date—2009 c 485: See note following RCW 46.35.010.

Effective date—2008 c 282: See note following RCW 46.20.308.

Declaration and intent—Effective date—Application—2005 c 323: See notes following RCW 46.16.010.

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

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

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

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

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

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

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

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

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

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

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

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

Severability—1981 c 19: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 19 § 7.]

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

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

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

(2) The monetary penalty for a violation of (a) RCW 46.55.105(2) is two hundred fifty dollars for each offense; (b) RCW 46.61.210(1) is five hundred dollars for each offense. No penalty assessed under this subsection (2) may be reduced.

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

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

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

(6) Whenever a monetary penalty, fee, cost, assessment, or other monetary obligation is imposed by a court under this chapter it is immediately payable. If the court determines, in its discretion, that a person is not able to pay a monetary obligation in full, and not more than one year has passed since the later of July 1, 2005, or the date the monetary obligation initially became due and payable, the court shall enter into a payment plan with the person, unless the person has previously been granted a payment plan with respect to the same monetary obligation, or unless the person is in noncompliance of any existing or prior payment plan, in which case the court may, at its discretion, implement a payment plan. If the court has notified the department that the person has failed to pay or comply and the person has subsequently entered into a payment plan and made an initial payment, the court shall notify the department that the infraction has been adjudicated, and the department shall rescind any suspension of the person's driver's license or driver's privilege based on failure to respond to that infraction. "Payment plan," as used in this section, means a plan that requires reasonable payments based on the financial ability of the person to pay. The person may voluntarily pay an amount at any time in addition to the payments required under the payment plan.

(a) If a payment required to be made under the payment plan is delinquent or the person fails to complete a community restitution program on or before the time established under the payment plan, unless the court determines good cause therefor and adjusts the payment plan or the community restitution plan accordingly, the court shall notify the department of the person's failure to meet the conditions of

the plan, and the department shall suspend the person's driver's license or driving privilege until all monetary obligations, including those imposed under subsections (3) and (4) of this section, have been paid, and court authorized community restitution has been completed, or until the department has been notified that the court has entered into a new time payment or community restitution agreement with the person.

(b) If a person has not entered into a payment plan with the court and has not paid the monetary obligation in full on or before the time established for payment, the court shall notify the department of the delinquency. The department shall suspend the person's driver's license or driving privilege until all monetary obligations have been paid, including those imposed under subsections (3) and (4) of this section, or until the person has entered into a payment plan under this section.

(c) If the payment plan is to be administered by the court, the court may assess the person a reasonable administrative fee to be wholly retained by the city or county with jurisdiction. The administrative fee shall not exceed ten dollars per infraction or twenty-five dollars per payment plan, whichever is less.

(d) Nothing in this section precludes a court from contracting with outside entities to administer its payment plan system. When outside entities are used for the administration of a payment plan, the court may assess the person a reasonable fee for such administrative services, which fee may be calculated on a periodic, percentage, or other basis.

(e) If a court authorized community restitution program for offenders is available in the jurisdiction, the court may allow conversion of all or part of the monetary obligations due under this section to court authorized community restitution in lieu of time payments if the person is unable to make reasonable time payments.

(7) In addition to any other penalties imposed under this section and not subject to the limitation of subsection (1) of this section, a person found to have committed a traffic infraction shall be assessed:

(a) A fee of five dollars per infraction. Under no circumstances shall this fee be reduced or waived. Revenue from this fee shall be forwarded to the state treasurer for deposit in the emergency medical services and trauma care system trust account under RCW 70.168.040;

(b) A fee of ten dollars per infraction. Under no circumstances shall this fee be reduced or waived. Revenue from this fee shall be forwarded to the state treasurer for deposit in the Washington auto theft prevention authority account; and

(c) A fee of two dollars per infraction. Revenue from this fee shall be forwarded to the state treasurer for deposit in the traumatic brain injury account established in RCW 74.31.060.

(8)(a) In addition to any other penalties imposed under this section and not subject to the limitation of subsection (1) of this section, a person found to have committed a traffic infraction other than of RCW 46.61.527 shall be assessed an additional penalty of twenty dollars. The court may not reduce, waive, or suspend the additional penalty unless the court finds the offender to be indigent. If a court authorized community restitution program for offenders is available in the jurisdiction, the court shall allow offenders to offset all or a part of the penalty due under this subsection (8) by participation in the court authorized community restitution program.

(b) Eight dollars and fifty cents of the additional penalty under (a) of this subsection shall be remitted to the state treasurer. The remaining revenue from the additional penalty must be remitted under chapters 2.08, 3.46, 3.50, 3.62, 10.82, and 35.20 RCW. Money remitted under this subsection to the state treasurer must be deposited in the state general fund. The balance of the revenue received by the county or city treasurer under this subsection must be deposited into the county or city current expense fund. Moneys retained by the city or county under this subsection shall constitute reimbursement for any liabilities under RCW 43.135.060.

(9) If a legal proceeding, such as garnishment, has commenced to collect any delinquent amount owed by the person for any penalty imposed by the court under this section, the court may, at its discretion, enter into a payment plan.

(10) The monetary penalty for violating RCW 46.37.395 is: (a) Two hundred fifty dollars for the first violation; (b) five hundred dollars for the second violation; and (c) seven hundred fifty dollars for each violation thereafter. [2009 c 479 § 39. Prior: 2007 c 356 § 8; 2007 c 199 § 28; prior: 2005 c 413 § 2; 2005 c 320 § 2; 2005 c 288 § 8; 2003 c 380 § 2. Prior: 2002 c 279 § 15; 2002 c 175 § 36; 2001 c 289 § 2; 1997 c 331 § 3; 1993 c 501 § 11; 1986 c 213 § 2; 1984 c 258 § 330; prior: 1982 1st ex.s. c 14 § 4; 1982 1st ex.s. c 12 § 1; 1982 c 10 § 13; prior: 1981 c 330 § 7; 1981 c 19 § 6; 1980 c 128 § 4; 1979 ex.s. c 136 § 13.]

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

Effective date—2009 c 479: See note following RCW 2.56.030.

Short title—2007 c 356: See note following RCW 74.31.005.

Findings—Intent—Short title—2007 c 199: See notes following RCW 9A.56.065.

Effective date—2005 c 288: See note following RCW 46.20.245.

Effective date—2002 c 175: See note following RCW 7.80.130.

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

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

Intent—1984 c 258: See note following RCW 3.34.130.

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

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

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

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

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

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

Additional statutory assessments: RCW 3.62.090, 46.64.055.

46.63.160 Toll collection systems—Photo enforcement systems. (1) This section applies only to infractions issued under RCW 46.61.690 for toll collection evasion.

(2) Nothing in this section prohibits a law enforcement officer from issuing a notice of traffic infraction to a person in control of a vehicle at the time a violation occurs under RCW 46.63.030(1) (a), (b), or (c).

(3) Toll collection systems include manual cash collection, electronic toll collection, and photo enforcement systems.

(4) "Electronic toll collection system" means a system of collecting tolls or charges that is capable of charging the account of the toll patron the appropriate toll or charge by electronic transmission from the motor vehicle to the toll collection system, which information is used to charge the appropriate toll or charge to the patron's account.

(5) "Photo enforcement system" means a vehicle sensor installed to work in conjunction with an electronic toll collection system that automatically produces one or more photographs, one or more microphotographs, a videotape, or other recorded images of a vehicle operated in violation of an infraction under this chapter.

(6) The use of a toll collection system is subject to the following requirements:

(a) The department of transportation shall adopt rules that allow an open standard for automatic vehicle identification transponders used for electronic toll collection to be compatible with other electronic payment devices or transponders from the Washington state ferry system, other public transportation systems, or other toll collection systems to the extent that technology permits. The rules must also allow for multiple vendors providing electronic payment devices or transponders as technology permits.

(b) The department of transportation may not sell, distribute, or make available in any way, the names and addresses of electronic toll collection system account holders.

(7) The use of a photo enforcement system for issuance of notices of infraction is subject to the following requirements:

(a) Photo enforcement systems may take photographs, digital photographs, microphotographs, videotapes, or other recorded images of the vehicle and vehicle license plate only.

(b) A notice of infraction must be mailed to the registered owner of the vehicle or to the renter of a vehicle within sixty days of the violation. The law enforcement officer issuing the notice of infraction shall include with it a certificate or facsimile thereof, based upon inspection of photographs, microphotographs, videotape, or other recorded images produced by a photo enforcement system, stating the facts supporting the notice of infraction. This certificate or facsimile is prima facie evidence of the facts contained in it and is admissible in a proceeding charging a violation under this chapter. The photographs, digital photographs, microphotographs, videotape, or other recorded images evidencing the violation must be available for inspection and admission into evidence in a proceeding to adjudicate the liability for the infraction.

(c) Notwithstanding any other provision of law, all photographs, digital photographs, microphotographs, videotape, or other recorded images prepared under this chapter are for the exclusive use of the tolling agency and law enforcement in the discharge of duties under this section and are not open to the public and may not be used in a court in a pending action or proceeding unless the action or proceeding relates to a violation under this chapter. No photograph, digital photograph, microphotograph, videotape, or other recorded image may be used for any purpose other than enforcement of violations under this chapter nor retained longer than necessary to enforce this chapter or verify that tolls are paid.

(d) All locations where a photo enforcement system is used must be clearly marked by placing signs in locations that clearly indicate to a driver that he or she is entering a zone where traffic laws are enforced by a photo enforcement system.

(8) Infractions detected through the use of photo enforcement systems are not part of the registered owner's driving record under RCW 46.52.101 and 46.52.120. Additionally, infractions generated by the use of photo enforcement systems under this section shall be processed in the same manner as parking infractions, including for the purposes of RCW 3.50.100, 35.20.220, 46.16.216, and 46.20.270(3).

(9) The penalty for an infraction detected through the use of a photo enforcement system shall be forty dollars plus an additional toll penalty. The toll penalty is equal to three times the cash toll for a standard passenger car during peak hours. The toll penalty may not be reduced. The court shall remit the toll penalty to the department of transportation or a private entity under contract with the department of transportation for deposit in the statewide account in which tolls are deposited for the tolling facility at which the violation occurred. If the driver is found not to have committed an infraction under this section, the driver shall pay the toll due at the time the photograph was taken, unless the toll has already been paid.

(10) If the registered owner of the vehicle is a rental car business the department of transportation or a law enforcement agency shall, before a notice of infraction being issued under this section, provide a written notice to the rental car business that a notice of infraction may be issued to the rental car business if the rental car business does not, within eighteen days of the mailing of the written notice, provide to the issuing agency by return mail:

(a) A statement under oath stating the name and known mailing address of the individual driving or renting the vehicle when the infraction occurred; or

(b) A statement under oath that the business is unable to determine who was driving or renting the vehicle at the time the infraction occurred because the vehicle was stolen at the time of the infraction. A statement provided under this subsection must be accompanied by a copy of a filed police report regarding the vehicle theft; or

(c) In lieu of identifying the vehicle operator, the rental car business may pay the applicable toll and fee.

Timely mailing of this statement to the issuing law enforcement agency relieves a rental car business of any liability under this chapter for the notice of infraction. [2009 c 272 § 1. Prior: 2007 c 372 § 2; 2007 c 101 § 2; 2004 c 231 § 6.]

Report to legislature—2009 c 272: "The department shall report to the transportation committees of the legislature by December 1, 2009, with recommendations regarding implementing a time period for the payment of tolls after crossing the Tacoma Narrows bridge in which individuals without a transponder could pay the toll due prior to the issuance of an infraction." [2009 c 272 § 2.]

46.63.170 Automated traffic safety cameras—Definition. (1) The use of automated traffic safety cameras for issu-

ance of notices of infraction is subject to the following requirements:

(a) The appropriate local legislative authority must first enact an ordinance allowing for their use to detect one or more of the following: Stoplight, railroad crossing, or school speed zone violations. At a minimum, the local ordinance must contain the restrictions described in this section and provisions for public notice and signage. Cities and counties using automated traffic safety cameras before July 24, 2005, are subject to the restrictions described in this section, but are not required to enact an authorizing ordinance.

(b) Use of automated traffic safety cameras is restricted to two-arterial intersections, railroad crossings, and school speed zones only.

(c) During the 2009-2011 fiscal biennium, automated traffic safety cameras may be used to detect speed violations for the purposes of section 201(2), chapter 470, Laws of 2009 if the local legislative authority first enacts an ordinance authorizing the use of cameras to detect speed violations.

(d) Automated traffic safety cameras may only take pictures of the vehicle and vehicle license plate and only while an infraction is occurring. The picture must not reveal the face of the driver or of passengers in the vehicle.

(e) A notice of infraction must be mailed to the registered owner of the vehicle within fourteen days of the violation, or to the renter of a vehicle within fourteen days of establishing the renter's name and address under subsection (3)(a) of this section. The law enforcement officer issuing the notice of infraction shall include with it a certificate or facsimile thereof, based upon inspection of photographs, microphotographs, or electronic images produced by an automated traffic safety camera, stating the facts supporting the notice of infraction. This certificate or facsimile is prima facie evidence of the facts contained in it and is admissible in a proceeding charging a violation under this chapter. The photographs, microphotographs, or electronic images evidencing the violation must be available for inspection and admission into evidence in a proceeding to adjudicate the liability for the infraction. A person receiving a notice of infraction based on evidence detected by an automated traffic safety camera may respond to the notice by mail.

(f) The registered owner of a vehicle is responsible for an infraction under RCW 46.63.030(1)(e) unless the registered owner overcomes the presumption in RCW 46.63.075, or, in the case of a rental car business, satisfies the conditions under subsection (3) of this section. If appropriate under the circumstances, a renter identified under subsection (3)(a) of this section is responsible for an infraction.

(g) Notwithstanding any other provision of law, all photographs, microphotographs, or electronic images prepared under this section are for the exclusive use of law enforcement in the discharge of duties under this section and are not open to the public and may not be used in a court in a pending action or proceeding unless the action or proceeding relates to a violation under this section. No photograph, microphotograph, or electronic image may be used for any purpose other than enforcement of violations under this section nor retained longer than necessary to enforce this section.

(h) All locations where an automated traffic safety camera is used must be clearly marked by placing signs in locations that clearly indicate to a driver that he or she is entering a zone where traffic laws are enforced by an automated traffic safety camera.

(i) If a county or city has established an authorized automated traffic safety camera program under this section, the compensation paid to the manufacturer or vendor of the equipment used must be based only upon the value of the equipment and services provided or rendered in support of the system, and may not be based upon a portion of the fine or civil penalty imposed or the revenue generated by the equipment.

(2) Infractions detected through the use of automated traffic safety cameras are not part of the registered owner's driving record under RCW 46.52.101 and 46.52.120. Additionally, infractions generated by the use of automated traffic safety cameras under this section shall be processed in the same manner as parking infractions, including for the purposes of RCW 3.50.100, 35.20.220, 46.16.216, and 46.20.270(3). However, the amount of the fine issued for an infraction generated through the use of an automated traffic safety camera shall not exceed the amount of a fine issued for other parking infractions within the jurisdiction.

(3) If the registered owner of the vehicle is a rental car business, the law enforcement agency shall, before a notice of infraction being issued under this section, provide a written notice to the rental car business that a notice of infraction may be issued to the rental car business if the rental car business does not, within eighteen days of receiving the written notice, provide to the issuing agency by return mail:

(a) A statement under oath stating the name and known mailing address of the individual driving or renting the vehicle when the infraction occurred; or

(b) A statement under oath that the business is unable to determine who was driving or renting the vehicle at the time the infraction occurred because the vehicle was stolen at the time of the infraction. A statement provided under this subsection must be accompanied by a copy of a filed police report regarding the vehicle theft; or

(c) In lieu of identifying the vehicle operator, the rental car business may pay the applicable penalty.

Timely mailing of this statement to the issuing law enforcement agency relieves a rental car business of any liability under this chapter for the notice of infraction.

(4) Nothing in this section prohibits a law enforcement officer from issuing a notice of traffic infraction to a person in control of a vehicle at the time a violation occurs under RCW 46.63.030(1) (a), (b), or (c).

(5) For the purposes of this section, "automated traffic safety camera" means a device that uses a vehicle sensor installed to work in conjunction with an intersection traffic control system, a railroad grade crossing control system, or a speed measuring device, and a camera synchronized to automatically record one or more sequenced photographs, microphotographs, or electronic images of the rear of a motor vehicle at the time the vehicle fails to stop when facing a steady red traffic control signal or an activated railroad grade crossing control signal, or exceeds a speed limit in a school speed zone as detected by a speed measuring device. During the 2009-2011 fiscal biennium, an automated traffic safety camera includes a camera used to detect speed violations for the purposes of section 201(2), chapter 470, Laws of 2009.

(6) During the 2009-2011 fiscal biennium, this section does not apply to automated traffic safety cameras for the purposes of section 218(2), chapter 470, Laws of 2009. [2009 c 470 § 714; 2007 c 372 § 3; 2005 c 167 § 1.]

Effective date—2009 c 470: See note following RCW 46.68.170.

Chapter 46.64 RCW
ENFORCEMENT

Sections

46.64.055 Additional monetary penalty.

46.64.055 Additional monetary penalty. (1) In addition to any other penalties imposed for conviction of a violation of this title that is a misdemeanor, gross misdemeanor, or felony, the court shall impose an additional penalty of fifty dollars. The court may not reduce, waive, or suspend the additional penalty unless the court finds the offender to be indigent. If a community restitution program for offenders is available in the jurisdiction, the court shall allow offenders to offset all or a part of the penalty due under this section by participation in the community restitution program.

(2) Revenue from the additional penalty must be remitted under chapters 2.08, 3.46, 3.50, 3.62, 10.82, and 35.20 RCW. Money remitted under this section to the state treasurer must be deposited in the state general fund. The balance of the revenue received by the county or city treasurer under this section must be deposited into the county or city current expense fund. Moneys retained by the city or county under this subsection shall constitute reimbursement for any liabilities under RCW 43.135.060. [2009 c 479 § 40; 2002 c 175 § 38; 2001 c 289 § 3.]

Effective date—2009 c 479: See note following RCW 2.56.030.

Effective date—2002 c 175: See note following RCW 7.80.130.

Additional statutory assessments: RCW 3.62.090.

Chapter 46.66 RCW
WASHINGTON AUTO THEFT PREVENTION AUTHORITY

Sections

46.66.080 Washington auto theft prevention authority account.

46.66.080 Washington auto theft prevention authority account. (1) The Washington auto theft prevention authority account is created in the state treasury, subject to appropriation. All revenues from the traffic infraction surcharge in RCW 46.63.110(7)(b) and all receipts from gifts, grants, bequests, devises, or other funds from public and private sources to support the activities of the auto theft prevention authority must be deposited into the account. Expenditures from the account may be used only for activities relating to motor vehicle theft, including education, prevention, law enforcement, investigation, prosecution, and confinement. During the 2009-2011 fiscal biennium, the legislature may appropriate moneys from the Washington auto theft prevention authority account for criminal justice purposes and community building.

(2) The authority shall allocate moneys appropriated from the account to public agencies for the purpose of establishing, maintaining, and supporting programs that are designed to prevent motor vehicle theft, including:

(a) Financial support to prosecution agencies to increase the effectiveness of motor vehicle theft prosecution;

(b) Financial support to a unit of local government or a team consisting of units of local governments to increase the effectiveness of motor vehicle theft enforcement;

(c) Financial support for the procurement of equipment and technologies for use by law enforcement agencies for the purpose of enforcing motor vehicle theft laws; and

(d) Financial support for programs that are designed to educate and assist the public in the prevention of motor vehicle theft.

(3) The costs of administration shall not exceed ten percent of the moneys in the account in any one year so that the greatest possible portion of the moneys available to the authority is expended on combating motor vehicle theft.

(4) Prior to awarding any moneys from the Washington auto theft prevention authority account for motor vehicle theft enforcement, the auto theft prevention authority must verify that the financial award includes sufficient funding to cover proposed activities, which include, but are not limited to: (a) State, municipal, and county offender and juvenile confinement costs; (b) administration costs; (c) law enforcement costs; (d) prosecutor costs; and (e) court costs, with a priority being given to ensuring that sufficient funding is available to cover state, municipal, and county offender and juvenile confinement costs.

(5) Moneys expended from the Washington auto theft prevention authority account under subsection (2) of this section shall be used to supplement, not supplant, other moneys that are available for motor vehicle theft prevention.

(6) Grants provided under subsection (2) of this section constitute reimbursement for purposes of RCW 43.135.060(1). [2009 c 564 § 945; 2007 c 199 § 27.]

Effective date—2009 c 564: See note following RCW 2.68.020.

Chapter 46.68 RCW
DISPOSITION OF REVENUE

Sections

46.68.060 Highway safety fund.
46.68.065 Motorcycle safety education account.
46.68.170 RV account.
46.68.220 Department of licensing services account.
46.68.294 Transportation partnership account—Legislative transfer.

46.68.060 Highway safety fund. There is hereby created in the state treasury a fund to be known as the highway safety fund to the credit of which shall be deposited all moneys directed by law to be deposited therein. This fund shall be used for carrying out the provisions of law relating to driver licensing, driver improvement, financial responsibility, cost of furnishing abstracts of driving records and maintaining such case records, and to carry out the purposes set forth in RCW 43.59.010. During the 2007-2009 and 2009-2011 fiscal biennia, the legislature may transfer from the highway safety fund to the motor vehicle fund and the multimodal transportation account such amounts as reflect the excess fund balance of the highway safety fund. [2009 c 470 § 711; 2007 c 518 § 714; 1969 c 99 § 11; 1967 c 174 § 4;

1965 c 25 § 3; 1961 c 12 § 46.68.060. Prior: 1957 c 104 § 1; 1937 c 188 § 81; RRS § 6312-81; 1921 c 108 § 13; RRS § 6375.]

Effective date—2009 c 470: See note following RCW 46.68.170.

Severability—Effective date—2007 c 518: See notes following RCW 46.68.170.

Effective date—1969 c 99: See note following RCW 79A.05.070.

Effective date—1969 c 25: See note following RCW 46.16.060.

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

Effective date—1965 c 25: See note following RCW 46.68.030.

Deposits into account: RCW 46.20.505, 46.20.510, 46.81A.030.

46.68.065 Motorcycle safety education account. There is hereby created the motorcycle safety education account in the highway safety fund of the state treasury, to the credit of which shall be deposited all moneys directed by law to be credited thereto. All expenses incurred by the director of the department of licensing in administering RCW 46.20.505 through 46.20.520 shall be borne by appropriations from this account, and moneys deposited into this account shall be used only for the purposes authorized in RCW 46.20.505 through 46.20.520. During the 2007-2009 fiscal biennium, the legislature may transfer from the motorcycle safety education account such amounts as reflect the excess fund balance of the account. [2009 c 8 § 502; 2001 c 285 § 1; 1982 c 77 § 8.]

Effective date—2009 c 8: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 5, 2009]." [2009 c 8 § 509.]

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

46.68.170 RV account. There is hereby created in the motor vehicle fund the RV account. All moneys hereafter deposited in said account shall be used by the department of transportation for the construction, maintenance, and operation of recreational vehicle sanitary disposal systems at safety rest areas in accordance with the department's highway system plan as prescribed in chapter 47.06 RCW. During the 2007-2009 and 2009-2011 fiscal biennia, the legislature may transfer from the RV account to the motor vehicle fund such amounts as reflect the excess fund balance of the RV account to accomplish the purposes identified in this section. [2009 c 470 § 701; 2007 c 518 § 701; 1996 c 237 § 2; 1980 c 60 § 3.]

Effective date—2009 c 470: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 13, 2009]." [2009 c 470 § 802.]

Severability—2007 c 518: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2007 c 518 § 1101.]

Effective date—2007 c 518: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 15, 2007]." [2007 c 518 § 1102.]

Effective date—1980 c 60: See note following RCW 47.38.050.

Additional license fees for recreational vehicles: RCW 46.16.063.

46.68.220 Department of licensing services account. The department of licensing services account is created in the motor vehicle fund. All receipts from service fees received under RCW 46.01.140(4)(b) shall be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for information and service delivery systems for the department, and for reimbursement of county licensing activities. During the 2007-2009 and 2009-2011 fiscal biennia, the legislature may transfer from the department of licensing services account such amounts as reflect the excess fund balance of the account. [2009 c 470 § 712; 2009 c 8 § 503; 1992 c 216 § 5.]

Effective date—2009 c 470: See note following RCW 46.68.170.

Effective date—2009 c 8: See note following RCW 46.68.065.

46.68.294 Transportation partnership account—Legislative transfer. During the 2007-2009 fiscal biennium, the legislature may transfer from the transportation partnership account to the transportation 2003 account (nickel account) such amounts as reflect the excess fund balance of the transportation partnership account. [2009 c 8 § 505.]

Effective date—2009 c 8: See note following RCW 46.68.065.

Chapter 46.70 RCW
DEALERS AND MANUFACTURERS

Sections

46.70.180 Unlawful acts and practices.

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

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

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

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

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

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

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

(2)(a)(i) To incorporate within the terms of any purchase and sale or lease agreement any statement or representation with regard to the sale, lease, or financing of a vehicle which is false, deceptive, or misleading, including but not limited to terms that include as an added cost to the selling price or capitalized cost of a vehicle an amount for licensing or transfer

of title of that vehicle which is not actually due to the state, unless such amount has in fact been paid by the dealer prior to such sale.

(ii) However, an amount not to exceed the applicable amount provided in (iii)(A) and (B) of this subsection (2)(a) per vehicle sale or lease may be charged by a dealer to recover administrative costs for collecting motor vehicle excise taxes, licensing and registration fees and other agency fees, verifying and clearing titles, transferring titles, perfecting, releasing, or satisfying liens or other security interests, and other administrative and documentary services rendered by a dealer in connection with the sale or lease of a vehicle and in carrying out the requirements of this chapter or any other provisions of state law.

(iii) A dealer may charge under (a)(ii) of this subsection:

(A) As of July 26, 2009, through June 30, 2014, an amount not to exceed one hundred fifty dollars; and

(B) As of July 1, 2014, an amount not to exceed fifty dollars.

(b) A dealer may charge the documentary service fee in (a) of this subsection under the following conditions:

(i) The documentary service fee is disclosed in writing to a prospective purchaser or lessee before the execution of a purchase and sale or lease agreement;

(ii) The dealer discloses to the purchaser or lessee in writing that the documentary service fee is a negotiable fee. The disclosure must be written in a typeface that is at least as large as the typeface used in the standard text of the document that contains the disclosure and that is bold faced, capitalized, underlined, or otherwise set out from the surrounding material so as to be conspicuous. The dealer shall not represent to the purchaser or lessee that the fee or charge is required by the state to be paid by either the dealer or prospective purchaser or lessee;

(iii) The documentary service fee is separately designated from the selling price or capitalized cost of the vehicle and from any other taxes, fees, or charges; and

(iv) Dealers disclose in any advertisement that a documentary service fee in an amount provided in (iv)(A) and (B) of this subsection (2)(b) may be added to the sale price or the capitalized cost:

(A) As of July 26, 2009, through June 30, 2014, an amount up to one hundred fifty dollars; and

(B) As of July 1, 2014, an amount up to fifty dollars.

For the purposes of this subsection (2), the term "documentary service fee" means the optional amount charged by a dealer to provide the services specified in (a) of this subsection.

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

(4) To commit, allow, or ratify any act of "bushing" which is defined as follows: Entering into a written contract, written purchase order or agreement, retail installment sales agreement, note and security agreement, or written lease agreement, hereinafter collectively referred to as contract or lease, signed by the prospective buyer or lessee of a vehicle, which:

(a) Is subject to any conditions or the dealer's or his or her authorized representative's future acceptance, and the dealer fails or refuses within four calendar days, exclusive of Saturday, Sunday, or legal holiday, and prior to any further negotiations with said buyer or lessee to inform the buyer or lessee either: (i) That the dealer unconditionally accepts the contract or lease, having satisfied, removed, or waived all conditions to acceptance or performance, including, but not limited to, financing, assignment, or lease approval; or (ii) that the dealer rejects the contract or lease, thereby automatically voiding the contract or lease, as long as such voiding does not negate commercially reasonable contract or lease provisions pertaining to the return of the subject vehicle and any physical damage, excessive mileage after the demand for return of the vehicle, and attorneys' fees authorized by law, and tenders the refund of any initial payment or security made or given by the buyer or lessee, including, but not limited to, any down payment, and tenders return of the trade-in vehicle, key, other trade-in, or certificate of title to a trade-in. Tender may be conditioned on return of the subject vehicle if previously delivered to the buyer or lessee.

The provisions of this subsection (4)(a) do not impair, prejudice, or abrogate the rights of a dealer to assert a claim against the buyer or lessee for misrepresentation or breach of contract and to exercise all remedies available at law or in equity, including those under chapter 62A.9A RCW, if the dealer, bank, or other lender or leasing company discovers that approval of the contract or financing or approval of the lease was based upon material misrepresentations made by the buyer or lessee, including, but not limited to, misrepresentations regarding income, employment, or debt of the buyer or lessee, as long as the dealer, or his or her staff, has not, with knowledge of the material misrepresentation, aided, assisted, encouraged, or participated, directly or indirectly, in the misrepresentation. A dealer shall not be in violation of this subsection (4)(a) if the buyer or lessee made a material misrepresentation to the dealer, as long as the dealer, or his or her staff, has not, with knowledge of the material misrepresentation, aided, assisted, encouraged, or participated, directly or indirectly, in the misrepresentation.

When a dealer informs a buyer or lessee under this subsection (4)(a) regarding the unconditional acceptance or rejection of the contract, lease, or financing by an electronic mail message, the dealer must also transmit the communication by any additional means;

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

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

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

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

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

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

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

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

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

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

(b) The dealer has satisfied the lien; and

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

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

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

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

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

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

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

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

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

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

(13) For a buyer's agent to arrange for or to negotiate the purchase, or both, of a new motor vehicle through an out-of-state dealer without disclosing in writing to the customer that the new vehicle would not be subject to chapter 19.118 RCW. This subsection also applies to leased vehicles. In addition, it is unlawful for any buyer's agent to fail to have a written agreement with the customer that: (a) Sets forth the terms of the parties' agreement; (b) discloses to the customer the total amount of any fees or other compensation being paid by the customer to the buyer's agent for the agent's services; and (c) further discloses whether the fee or any portion of the fee is refundable.

(14) Being a manufacturer, other than a motorcycle manufacturer governed by chapter 46.93 RCW, to:

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

(b) Cancel or fail to renew the franchise or selling agreement of any vehicle dealer doing business in this state without fairly compensating the dealer at a fair going business value for his or her capital investment which shall include but not be limited to tools, equipment, and parts inventory possessed by the dealer on the day he or she is notified of such cancellation or termination and which are still within the dealer's possession on the day the cancellation or termination is effective, if: (i) The capital investment has been entered into with reasonable and prudent business judgment for the purpose of fulfilling the franchise; and (ii) the cancellation or nonrenewal was not done in good faith. Good faith is defined as the duty of each party to any franchise to act in a fair and equitable manner towards each other, so as to guarantee one party freedom from coercion, intimidation, or threats of coercion or intimidation from the other party: PROVIDED, That recommendation, endorsement, exposition, persuasion, urging, or argument are not deemed to constitute a lack of good faith;

(c) Encourage, aid, abet, or teach a vehicle dealer to sell or lease vehicles through any false, deceptive, or misleading sales or financing practices including but not limited to those practices declared unlawful in this section;

(d) Coerce or attempt to coerce a vehicle dealer to engage in any practice forbidden in this section by either threats of actual cancellation or failure to renew the dealer's franchise agreement;

(e) Refuse to deliver any vehicle publicly advertised for immediate delivery to any duly licensed vehicle dealer having a franchise or contractual agreement for the retail sale or lease of new and unused vehicles sold or distributed by such manufacturer within sixty days after such dealer's order has been received in writing unless caused by inability to deliver because of shortage or curtailment of material, labor, transportation, or utility services, or by any labor or production difficulty, or by any cause beyond the reasonable control of the manufacturer;

(f) To provide under the terms of any warranty that a purchaser or lessee of any new or unused vehicle that has been sold or leased, distributed for sale or lease, or transferred into this state for resale or lease by the vehicle manufacturer may only make any warranty claim on any item included as an integral part of the vehicle against the manufacturer of that item.

Nothing in this section may be construed to impair the obligations of a contract or to prevent a manufacturer, distributor, representative, or any other person, whether or not licensed under this chapter, from requiring performance of a written contract entered into with any licensee hereunder, nor does the requirement of such performance constitute a violation of any of the provisions of this section if any such contract or the terms thereof requiring performance, have been freely entered into and executed between the contracting parties. This paragraph and subsection (14)(b) of this section do not apply to new motor vehicle manufacturers governed by chapter 46.96 RCW.

(15) Unlawful transfer of an ownership interest in a motor vehicle as defined in RCW 19.116.050.

(16) To knowingly and intentionally engage in collusion with a registered owner of a vehicle to repossess and return or resell the vehicle to the registered owner in an attempt to avoid a suspended license impound under chapter 46.55 RCW. However, compliance with chapter 62A.9A RCW in repossessing, selling, leasing, or otherwise disposing of the vehicle, including providing redemption rights to the debtor, is not a violation of this section.

(17)(a) For a dealer to enter into a new motor vehicle sales contract without disclosing in writing to a buyer of the new motor vehicle, or to a dealer in the case of an unregistered motor vehicle, any known damage and repair to the new motor vehicle if the damage exceeds five percent of the manufacturer's suggested retail price as calculated at the dealer's authorized warranty rate for labor and parts, or one thousand dollars, whichever amount is greater. A manufacturer or new motor vehicle dealer is not required to disclose to a dealer or buyer that glass, tires, bumpers, or cosmetic parts of a new motor vehicle were damaged at any time if the damaged item has been replaced with original or comparable equipment. A replaced part is not part of the cumulative damage required to be disclosed under this subsection.

(b) A manufacturer is required to provide the same disclosure to a dealer of any known damage or repair as required in (a) of this subsection.

(c) If disclosure of any known damage or repair is not required under this section, a buyer may not revoke or rescind a sales contract due to the fact that the new motor vehicle was damaged and repaired before completion of the sale.

(d) As used in this section:

(i) "Cosmetic parts" means parts that are attached by and can be replaced in total through the use of screws, bolts, or other fasteners without the use of welding or thermal cutting, and includes windshields, bumpers, hoods, or trim panels.

(ii) "Manufacturer's suggested retail price" means the retail price of the new motor vehicle suggested by the manufacturer, and includes the retail delivered price suggested by the manufacturer for each accessory or item of optional equipment physically attached to the new motor vehicle at the time of delivery to the new motor vehicle dealer that is not included within the retail price suggested by the manufacturer for the new motor vehicle. [2009 c 123 § 1; 2009 c 49 § 1; 2007 c 155 § 2; 2006 c 289 § 1; 2003 c 368 § 1. Prior: 2001 c 272 § 10; 2001 c 64 § 9; 1999 c 398 § 10; 1997 c 153 § 1; 1996 c 194 § 3; 1995 c 256 § 26; 1994 c 284 § 13; 1993 c 175 § 3; 1990 c 44 § 14; 1989 c 415 § 20; 1986 c 241 § 18; 1985 c 472 § 13; 1981 c 152 § 6; 1977 ex.s. c 125 § 4; 1973 1st ex.s. c 132 § 18; 1969 c 112 § 1; 1967 ex.s. c 74 § 16.]

Reviser's note: This section was amended by 2009 c 49 § 1 and by 2009 c 123 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2007 c 155: See note following RCW 46.16.045.

Prospective application—2006 c 289: "This act applies prospectively only and not retroactively. It applies only to causes of action that arise (if change is substantive) or that are commenced (if change is procedural) on or after June 7, 2006." [2006 c 289 § 2.]

Severability—Effective date—1994 c 284: See RCW 43.22A.900 and 43.22A.901.

Severability—1990 c 44: See RCW 19.116.900.

Severability—1989 c 415: See RCW 46.96.900.

Certificate of ownership—Failure to transfer within specified time: RCW 46.12.101.

Glass—Limited windows—Vehicle sale requirements: RCW 46.37.430.

Odometers—Disconnecting, resetting, turning back, replacing without notifying purchaser: RCW 46.37.540 through 46.37.570.

Tires—Vehicle sale requirements: RCW 46.37.425.

Chapter 46.74 RCW
RIDE SHARING

Sections

46.74.010 Definitions.

46.74.010 Definitions. The definitions set forth in this section shall apply throughout this chapter, unless the context clearly indicates otherwise.

(1) "Commuter ride sharing" means a car pool or van pool arrangement whereby one or more fixed groups not exceeding fifteen persons each including the drivers, and (a) not fewer than five persons including the drivers, or (b) not fewer than four persons including the drivers where at least two of those persons are confined to wheelchairs when riding, are transported in a passenger motor vehicle with a gross vehicle weight not exceeding ten thousand pounds, excluding special rider equipment, between their places of abode or termini near such places, and their places of employment or educational or other institutions, each group in a single daily round trip where the drivers are also on the way to or from their places of employment or educational or other institution.

(2) "Flexible commuter ride sharing" means a car pool or van pool arrangement whereby a group of at least two but not exceeding fifteen persons including the driver is transported in a passenger motor vehicle with a gross vehicle weight not exceeding ten thousand pounds, excluding special rider equipment, between their places of abode or termini near such places, and their places of employment or educational or other institutions, where the driver is also on the way to or from his or her place of employment or educational or other institution.

(3) "Persons with special transportation needs" means those persons defined in RCW 81.66.010(4).

(4) "Ride sharing for persons with special transportation needs" means an arrangement whereby a group of persons with special transportation needs, and their attendants, is transported by a public social service agency or a private, nonprofit transportation provider, as defined in RCW 81.66.010(3), serving persons with special needs, in a passenger motor vehicle as defined by the department to include small buses, cutaways, and modified vans not more than twenty-eight feet long: PROVIDED, That the driver need not be a person with special transportation needs.

(5) "Ride-sharing operator" means the person, entity, or concern, not necessarily the driver, responsible for the existence and continuance of commuter ride sharing, flexible commuter ride sharing, or ride sharing for persons with special transportation needs. The term "ride-sharing operator" includes but is not limited to an employer, an employer's agent, an employer-organized association, a state agency, a county, a city, a public transportation benefit area, or any other political subdivision that owns or leases a ride-sharing vehicle.

(6) "Ride-sharing promotional activities" means those activities involved in forming a commuter ride-sharing arrangement or a flexible commuter ride-sharing arrangement, including but not limited to receiving information from existing and prospective ride-sharing participants, sharing that information with other existing and prospective ride-sharing participants, matching those persons with other existing or prospective ride-sharing participants, and making assignments of persons to ride-sharing arrangements. [2009 c 557 § 5. Prior: 1997 c 250 § 8; 1997 c 95 § 1; 1996 c 244 § 2; 1979 c 111 § 1.]

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

Severability—1979 c 111: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 c 111 § 21.]

Chapter 46.82 RCW
DRIVER TRAINING SCHOOLS

Sections

46.82.280 Definitions.
46.82.300 Driver instructors' advisory committee.
46.82.310 School licenses—Insurance.
46.82.320 Instructor's license.
46.82.325 Background checks for school personnel.
46.82.330 Instructor's license—Application—Requirements.
46.82.360 Suspension, revocation, or denial of licenses—Failure to comply with specified business practices.

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

(1) "Advisory committee" means the driving instructors' advisory committee as created in this chapter.

(2) "Behind-the-wheel instruction" means instruction in an approved driver training school instruction vehicle according to and inclusive of the minimum required curriculum. Behind-the-wheel instruction is characterized by driving experience.

(3) "Classroom" means a space dedicated to and used exclusively by a driver training instructor for the instruction of students. With prior department approval, a branch office classroom may be located within alternative facilities, such as a public or private library, school, community college, college or university, or a business training facility.

(4) "Classroom instruction" means that portion of a traffic safety education course that is characterized by classroom-based student instruction conducted by or under the direct supervision of a licensed instructor or licensed instructors.

(5) "Director" means the director of the department of licensing of the state of Washington.

(6) "Driver training education course" means a course of instruction in traffic safety education approved and licensed by the department of licensing that consists of classroom and

behind-the-wheel instruction as documented by the minimum approved curriculum.

(7) "Driver training school" means a commercial driver training school engaged in the business of giving instruction, for a fee, in the operation of automobiles.

(8) "Enrollment" means the collecting of a fee or the signing of a contract for a driver training education course. "Enrollment" does not include the collecting of names and contact information for enrolling students once a driver training school is licensed to instruct.

(9) "Fraudulent practices" means any conduct or representation on the part of a driver training school owner or instructor including:

(a) Inducing anyone to believe, or to give the impression, that a license to operate a motor vehicle or any other license granted by the director may be obtained by any means other than those prescribed by law, or furnishing or obtaining the same by illegal or improper means, or requesting, accepting, or collecting money for such purposes;

(b) Operating a driver training school without a license, providing instruction without an instructor's license, verifying enrollment prior to being licensed, misleading or false statements on applications for a commercial driver training school license or instructor's license or on any required records or supporting documentation;

(c) Failing to fully document and maintain all required driver training school records of instruction, school operation, and instructor training;

(d) Issuing a driver training course certificate without requiring completion of the necessary behind-the-wheel and classroom instruction.

(10) "Instructor" means any person employed by or otherwise associated with a driver training school to instruct persons in the operation of an automobile.

(11) "Owner" means an individual, partnership, corporation, association, or other person or group that holds a substantial interest in a driver training school.

(12) "Person" means any individual, firm, corporation, partnership, or association.

(13) "Place of business" means a designated location at which the business of a driver training school is transacted or its records are kept.

(14) "Student" means any person enrolled in an approved driver training course.

(15) "Substantial interest holder" means a person who has actual or potential influence over the management or operation of any driver training school. Evidence of substantial interest includes, but is not limited to, one or more of the following:

(a) Directly or indirectly owning, operating, managing, or controlling a driver training school or any part of a driver training school;

(b) Directly or indirectly profiting from or assuming liability for debts of a driver training school;

(c) Is an officer or director of a driver training school;

(d) Owning ten percent or more of any class of stock in a privately or closely held corporate driver training school, or five percent or more of any class of stock in a publicly traded corporate driver training school;

(e) Furnishing ten percent or more of the capital, whether in cash, goods, or services, for the operation of a driver training school during any calendar year; or

(f) Directly or indirectly receiving a salary, commission, royalties, or other form of compensation from the activity in which a driver training school is or seeks to be engaged. [2009 c 101 § 1; 2006 c 219 § 2; 1986 c 80 § 1; 1979 ex.s. c 51 § 1.]

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

Effective date—2006 c 219: See note following RCW 46.82.285.

46.82.300 Driver instructors' advisory committee. (1) The director shall be assisted in the duties and responsibilities of this chapter by the driver instructors' advisory committee, consisting of seven members, two of which, when possible, must reside east of the crest of the Cascade mountains. Members of the advisory committee shall be appointed by the director for two-year terms and shall consist of two representatives of the driver training schools, two representatives of the driving instructors (who shall not be from the same school as the school member), a representative of the superintendent of public instruction, a representative of the department of licensing, and a representative from the Washington state traffic safety commission.

(2) The advisory committee shall meet at least semiannually and shall have additional meetings as may be called by the director. The director or the director's representative shall attend all meetings of the advisory committee and shall serve as chairman.

(3) Duties of the advisory committee shall be to:

(a) Advise and confer on department proposed policy and rule with the director or the director's representative on matters pertaining to the establishment of rules necessary to carry out this chapter;

(b) Review and update when necessary a curriculum consisting of a list of items of knowledge and the processes of driving a motor vehicle specifying the minimum requirements adjudged necessary in teaching a proper and adequate course of driver education;

(c) Review and update instructor certification standards to be consistent with RCW 46.82.330 and take into consideration those standards required to be met by traffic safety education teachers under RCW 28A.220.020(3); and

(d) Prepare the examination for a driver instructor's certificate and review examination results at least once each calendar year for the purpose of updating and revising examination standards. [2009 c 101 § 2; 2006 c 219 § 3; 2002 c 195 § 5; 1984 c 287 § 93; 1979 ex.s. c 51 § 3.]

Effective date—2006 c 219: See note following RCW 46.82.285.

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

46.82.310 School licenses—Insurance. (1) No person shall engage in the business of conducting a driver training school without a license issued by the director for that purpose. The school's license must be displayed before the school may:

(a) Schedule, enroll, or engage any students in a course of instruction;

(b) Issue a verification of enrollment to any student; or

(c) Begin any classroom or behind-the-wheel instruction.

(2) An application for a driver training school license shall be filed with the director, containing such information as prescribed by the director, including a uniform business identifier number, accompanied by an application fee as set by rule of the department, which shall in no event be refunded. Before an application for a driver training school license is approved, the business practices, facilities, records, vehicles, and insurance of the proposed school must be inspected and reviewed by authorized representatives of the director. If an application is approved by the director, the applicant shall be granted a license valid for a period of one year from the date of issuance.

(3) A driver training school may apply for a license to establish a branch office or branch classroom by filing an application with the director, containing such information as prescribed by the director, accompanied by an application fee as set by rule of the department, which shall in no event be refunded. Before an application for a license to establish a branch office or branch classroom is approved, the business practices, facilities, records, vehicles, and insurance of the proposed branch location must be inspected and reviewed by authorized representatives of the director. If an application is approved by the director, the applicant shall be granted a license valid for a period of one year from the date of issuance.

(4) The annual fee for renewal of a school or branch location license shall be set by rule of the department. Subject to the department's inspection of the business, the director shall issue a license certificate to each licensee which shall be conspicuously displayed in the place of business of the licensee. If the director has not received a renewal application postmarked on or before the date a license expires the license will be marked late. If the renewal application and fee are not received within thirty days after expiration of the license, the license will be void requiring a new application as provided for in this chapter, including payment of all fees. Instruction may not be given beyond the thirty days from the expiration of the license.

(5) The person to whom a driver training school license has been issued must notify the director in writing within ten business days after any change is made in the officers, directors, or location of the place of business of the school.

(6) Except as otherwise permitted by rule of the department, a change involving the ownership of a driver training school requires a new license application, including payment of all fees.

(a) The owner relinquishing the business must notify the director in writing within ten business days.

(b) The new owner must submit an application and fee as prescribed by rule of the department for transfer of the school's license to the director within ten business days.

(c) Upon receipt of the required notification and the application and fees for license transfer, the director shall permit continuance of the business for a period not to exceed sixty days from the date of transfer pending approval of the new application for a school license.

(d) The transferred license shall remain subject to suspension, revocation, or denial in accordance with RCW 46.82.350 and 46.82.360.

(7) Evidence of liability insurance coverage for the instruction vehicles and the building premises of the driver training school must be filed with the director prior to the issuance or renewal of a school license, and shall meet the following standards:

(a) Coverage must be provided by a company authorized to do business in Washington state;

(b) Automobile liability coverage shall be in the amount of not less than one million dollars, and shall include property damage and uninsured motorists coverage;

(c) The required coverage shall be maintained in full force and effect for the term of the school license;

(d) Changes in insurance coverage due to cancellation or expiration require notification of the director and proof of continuing coverage within ten working days following any change; and

(e) Coverage shall be issued in the name of the school and identify the covered locations and vehicles. [2009 c 101 § 3; 2006 c 219 § 4; 2002 c 352 § 24; 1979 ex.s. c 51 § 4.]

Effective date—2006 c 219: See note following RCW 46.82.285.

Effective dates—2002 c 352: See note following RCW 46.09.070.

46.82.320 Instructor's license. (1) No person affiliated with a driver training school shall give instruction in the operation of an automobile for a fee without a license issued by the director for that purpose. An application for an original or renewal instructor's license shall be filed with the director, containing such information as prescribed by this chapter and by the director, accompanied by an application fee set by rule of the department, which shall in no event be refunded. An application for a renewal instructor's license must be accompanied by proof of the applicant's continuing professional development that meets the standards adopted by the director. If the applicant satisfactorily meets the application requirements and the examination requirements as prescribed in RCW 46.82.330, the applicant shall be granted a license valid for a period of two years from the date of issuance.

(2) The director shall issue a license certificate to each qualified applicant.

(a) An employing driver training school must conspicuously display an instructor's license at its established place of business and display copies of the instructor's license at any branch office where the instructor provides instruction.

(b) Unless revoked, canceled, or denied by the director, the license shall remain the property of the licensee in the event of termination of employment or employment by another driver training school.

(c) If the director has not received a renewal application on or before the date a license expires, the license will be voided requiring a new application as provided for in this chapter, including examination and payment of all fees.

(d) If revoked, canceled, or denied by the director, the license must be surrendered to the department within ten days following the effective date of such action.

(3) Each licensee shall be provided with a wallet-size identification card by the director at the time the license is issued which shall be in the instructor's immediate possession at all times while engaged in instructing.

(4) The person to whom an instructor's license has been issued shall notify the director in writing within ten days of

any change of employment or termination of employment, providing the name and address of the new driver training school by whom the instructor will be employed. [2009 c 101 § 4; 2006 c 219 § 5; 2002 c 352 § 25; 1989 c 337 § 18; 1986 c 80 § 2; 1979 ex.s. c 51 § 5.]

Effective date—2006 c 219: See note following RCW 46.82.285.

Effective dates—2002 c 352: See note following RCW 46.09.070.

46.82.325 Background checks for school personnel. (1) Instructors, owners, and other persons affiliated with a school who have regularly scheduled, unsupervised contact with students are required to have a background check through the Washington state patrol criminal identification system and through the federal bureau of investigation. The background check shall also include a fingerprint check using a fingerprint card. Persons covered by this section must have their background rechecked under this subsection every five years.

(2) In addition to the background check required under subsection (1) of this section, persons covered by this section must have a background check through the Washington criminal identification system at the time of application for any renewal license.

(3) The cost of the background check shall be paid by the person. [2009 c 101 § 5; 2006 c 219 § 6; 2002 c 195 § 4.]

Effective date—2006 c 219: See note following RCW 46.82.285.

46.82.330 Instructor's license—Application—Requirements. (1) The application for an instructor's license shall document the applicant's fitness, knowledge, skills, and abilities to teach the classroom and behind-the-wheel phases of a driver training education program in a commercial driver training school.

(2) An applicant shall be eligible to apply for an original instructor's certificate if the applicant possesses and meets the following qualifications and conditions:

(a) Has been licensed to drive for five or more years and possesses a current and valid Washington driver's license or is a resident of a jurisdiction immediately adjacent to Washington state and possesses a current and valid license issued by such jurisdiction, and does not have on his or her driving record any of the violations or penalties set forth in (a)(i), (ii), or (iii) of this subsection. The director shall have the right to examine the driving record of the applicant from the department of licensing and from other jurisdictions and from these records determine if the applicant has had:

(i) Not more than one moving traffic violation within the preceding twelve months or more than two moving traffic violations in the preceding twenty-four months;

(ii) No drug or alcohol-related traffic violation or incident within the preceding three years. If there are two or more drug or alcohol-related traffic violations in the applicant's driving history, the applicant is no longer eligible to be a driving instructor; and

(iii) No driver's license suspension, cancellation, revocation, or denial within the preceding two years, or no more than two of these occurrences in the preceding five years;

(b) Is a high school graduate or the equivalent and at least twenty-one years of age;

(c) Has completed an acceptable application on a form prescribed by the director;

(d) Has satisfactorily completed a course of instruction in the training of drivers acceptable to the director that is no less than sixty hours in length and includes instruction in classroom and behind-the-wheel teaching methods and supervised practice behind-the-wheel teaching of driving techniques; and

(e) Has paid an examination fee as set by rule of the department and has successfully completed an instructor's examination as approved by the advisory committee. [2009 c 101 § 6; 2006 c 219 § 7; 1979 ex.s. c 51 § 6.]

Effective date—2006 c 219: See note following RCW 46.82.285.

46.82.360 Suspension, revocation, or denial of licenses—Failure to comply with specified business practices. The license of any driver training school or instructor may be suspended, revoked, denied, or refused renewal, or such other disciplinary action authorized under RCW 18.235.110 may be imposed, for failure to comply with the business practices specified in this section.

(1) No place of business shall be established nor any business of a driver training school conducted or solicited within one thousand feet of an office or building owned or leased by the department of licensing in which examinations for drivers' licenses are conducted. The distance of one thousand feet shall be measured along the public streets by the nearest route from the place of business to such building.

(2) Any automobile used by a driver training school or an instructor for instruction purposes must be equipped with:

(a) Dual controls for foot brake and clutch, or foot brake only in a vehicle equipped with an automatic transmission;

(b) An instructor's rear view mirror; and

(c) A sign in legible, printed English letters displayed on the back or top, or both, of the vehicle that:

(i) Is not less than twenty inches in horizontal width or less than ten inches in vertical height;

(ii) Has the words "student driver," "instruction car," or "driving school" in letters at least two and one-half inches in height near the top;

(iii) Has the name and telephone number of the school in similarly legible letters not less than one inch in height placed somewhere below the aforementioned words;

(iv) Has lettering and background colors that make it clearly readable at one hundred feet in clear daylight;

(v) Is displayed at all times when instruction is being given.

(3) Instruction may not be given by an instructor to a student who is under the age of fifteen, and behind-the-wheel instruction may not be given by an instructor to a student in an automobile unless the student possesses a current and valid instruction permit issued pursuant to RCW 46.20.055 or a current and valid driver's license.

(4) No driver training school or instructor shall advertise or otherwise indicate that the issuance of a driver's license is guaranteed or assured as a result of the course of instruction offered.

(5) No driver training school or instructor shall utilize any types of advertising without using the full, legal name of the school and identifying itself as a driver training school.

Instruction vehicles and equipment, classrooms, driving simulators, training materials and services advertised must be available in a manner as might be expected by the average person reading the advertisement.

(6) A driver training school shall have an established place of business owned, rented, or leased by the school and regularly occupied and used exclusively for the business of giving driver instruction. The established place of business of a driver training school shall be located in a district that is zoned for business or commercial purposes or zoned for conditional use permits for schools, trade schools, or colleges. However, the use of public or private schools does not alleviate the driver training school from securing and maintaining an established place of business or from using its own classroom on a regular basis as required under this chapter.

(a) The established place of business, branch office, or classroom or advertised address of any such driver training school shall not consist of or include a house trailer, residence, tent, temporary stand, temporary address, bus, telephone answering service if such service is the sole means of contacting the driver training school, a room or rooms in a hotel or rooming house or apartment house, or premises occupied by a single or multiple-unit dwelling house.

(b) A driver training school may lease classroom space within a public or private school that is recognized and regulated by the office of the superintendent of public instruction to conduct student instruction as approved by the director. However, such use of public or private classroom space does not alleviate the driver training school from securing and maintaining an established place of business nor from using its own classroom on a regular basis as required by this chapter.

(c) To classify as a branch office or classroom the facility must be within a thirty-five mile radius of the established place of business. The department may waive or extend the thirty-five mile restriction for driver training schools located in counties below the median population density.

(d) Nothing in this subsection may be construed as limiting the authority of local governments to grant conditional use permits or variances from zoning ordinances.

(7) No driver training school or instructor shall conduct any type of instruction or training on a course used by the department of licensing for testing applicants for a Washington driver's license.

(8) Each driver training school shall maintain its student, instructor, vehicle, insurance, and operating records at its established place of business.

(a) Student records must include the student's name, address, and telephone number, date of enrollment and all dates of instruction, the student's instruction permit or driver's license number, the type of training given, the total number of hours of instruction, and the name and signature of the instructor or instructors.

(b) Vehicle records shall include the original insurance policies and copies of the vehicle registration for all instruction vehicles.

(c) Student and instructor records shall be maintained for three years following the completion of the instruction. Vehicle records shall be maintained for five years following their issuance. All records shall be made available for inspection upon the request of the department.

(d) Upon a transfer or sale of school ownership the school records shall be transferred to and become the property and responsibility of the new owner.

(9) Each driver training school shall, at its established place of business, display, in a place where it can be seen by all clients, a copy of the required minimum curriculum furnished by the department and a copy of the school's own curriculum. Copies of the required minimum curriculum are to be provided to driver training schools and instructors by the director.

(10) Driver training schools and instructors shall submit to periodic inspections of their business practices, facilities, records, and insurance by authorized representatives of the director of the department of licensing. [2009 c 101 § 7; 2006 c 219 § 10; 1989 c 337 § 19; 1979 ex.s. c 51 § 9.]

Effective date—2006 c 219: See note following RCW 46.82.285.

Chapter 46.93 RCW
MOTORSPORTS VEHICLES— DEALER AND MANUFACTURER FRANCHISES

Sections

46.93.080 Payments by manufacturer to dealer for inventory, equipment, etc.

46.93.080 Payments by manufacturer to dealer for inventory, equipment, etc. (1) Upon the termination, cancellation, or nonrenewal of a franchise, the manufacturer shall pay the dealer, at a minimum:

(a) Dealer cost, less all allowances paid or credited to the dealer by the manufacturer, of unused, undamaged, and unsold new motorsports vehicles in the dealer's inventory that were acquired from the manufacturer or another dealer of the same line make in the ordinary course of business;

(b) Dealer cost for all unused, undamaged, and unsold supplies, parts, and accessories in original packaging, except that in the case of sheet metal, a comparable substitute for original packaging may be used, if the supply, part, or accessory was acquired from the manufacturer or from another dealer ceasing operations as a part of the dealer's initial inventory, as long as the supplies, parts, and accessories appear in the manufacturer's current parts catalog, list, or current offering;

(c) Dealer cost for all unused, undamaged, and unsold inventory, whether vehicles, parts, or accessories, the purchase of which was required by the manufacturer;

(d) The fair market value of each undamaged sign owned by the dealer that bears a common name, trade name, or trademark of the manufacturer, if acquisition of the sign was recommended or required by the manufacturer and the sign is in good and usable condition less reasonable wear and tear, and has not been depreciated by the dealer more than fifty percent of the value of the sign; and

(e) The fair market value of all special tools owned or leased by the dealer that were acquired from the manufacturer or persons approved by the manufacturer, and that were required by the manufacturer, and are in good and usable condition, less reasonable wear and tear. However, if the tools are leased by the dealer, the manufacturer shall pay the dealer such amounts that are required by the lessor to terminate the lease under the terms of the lease agreement.

(2) To the extent the franchise agreement provides for payment or reimbursement to the dealer in excess of that specified in this section, the provisions of the franchise agreement will control.

(3) The manufacturer shall pay the dealer the sums specified in subsection (1) of this section within ninety days after the termination, cancellation, or nonrenewal of the franchise, if the dealer has clear title to the property or can provide clear title to the property upon payment by the manufacturer and is in a position to convey that title to the manufacturer. [2009 c 232 § 1; 2003 c 354 § 8.]

Chapter 46.96 RCW

MANUFACTURERS' AND DEALERS' FRANCHISE AGREEMENTS

Sections

46.96.080 Payments by manufacturer to dealer for inventory, equipment, etc.

46.96.080 Payments by manufacturer to dealer for inventory, equipment, etc. (1) Upon the termination, cancellation, or nonrenewal of a franchise, the manufacturer shall pay the new motor vehicle dealer, at a minimum:

(a) Dealer cost plus any charges by the manufacturer for distribution, delivery, and taxes, less all allowances paid or credited to the dealer by the manufacturer, of unused, undamaged, and unsold new motor vehicles in the new motor vehicle dealer's inventory that were acquired from the manufacturer or another new motor vehicle dealer of the same line make in the ordinary course of business within the previous twelve months;

(b) Dealer cost for all unused, undamaged, and unsold supplies, parts, and accessories in original packaging, except that in the case of sheet metal, a comparable substitute for original packaging may be used, if the supply, part, or accessory was acquired from the manufacturer or from another new motor vehicle dealer ceasing operations as a part of the new motor vehicle dealer's initial inventory as long as the supplies, parts, and accessories appear in the manufacturer's current parts catalog, list, or current offering;

(c) Dealer cost for all unused, undamaged, and unsold inventory, whether vehicles, parts, or accessories, the purchase of which was required by the manufacturer;

(d) The fair market value of each undamaged sign owned by the new motor vehicle dealer that bears a common name, trade name, or trademark of the manufacturer, if acquisition of the sign was recommended or required by the manufacturer and the sign is in good and usable condition less reasonable wear and tear, and has not been depreciated by the dealer more than fifty percent of the value of the sign;

(e) The fair market value of all equipment, furnishings, and special tools owned or leased by the new motor vehicle dealer that were acquired from the manufacturer or sources approved by the manufacturer and that were recommended or required by the manufacturer and are in good and usable condition, less reasonable wear and tear. However, if the equipment, furnishings, or tools are leased by the new motor vehicle dealer, the manufacturer shall pay the new motor vehicle dealer such amounts that are required by the lessor to terminate the lease under the terms of the lease agreement; and

(f) The cost of transporting, handling, packing, and loading of new motor vehicles, supplies, parts, accessories, signs, special tools, equipment, and furnishings.

To the extent the franchise agreement provides for payment or reimbursement to the new motor vehicle dealer in excess of that specified in this section, the provisions of the franchise agreement shall control.

(2)(a) For the nonrenewal or termination of a franchise that is implemented as a result of the sale of assets or stock of the motor vehicle dealer, the party purchasing the assets or stock of the motor vehicle dealer may negotiate for the purchase or other transfer of some or all unused, undamaged, and unsold new motor vehicles in the selling new motor vehicle dealer's inventory that were acquired from the manufacturer or another new motor vehicle dealer of the same line make in the ordinary course of business within the previous twelve months.

(b) For the nonrenewal or termination of a franchise that is implemented as a result of the sale of assets or stock of the motor vehicle dealer, this section does not prohibit a manufacturer from negotiating with the purchasing party for the purchase or other transfer of some or all unused, undamaged, and unsold new motor vehicles in the selling new motor vehicle dealer's inventory that were acquired from the manufacturer or another new motor vehicle dealer of the same line make in the ordinary course of business within the previous twelve months.

(c) A manufacturer's obligation under (a) of this subsection extends only to vehicles not purchased or otherwise transferred to the party purchasing the assets or stock of the motor vehicle dealer.

(3) The manufacturer shall pay the new motor vehicle dealer the sums specified in subsection (1) of this section within ninety days after the termination, cancellation, or nonrenewal of the franchise, if the new motor vehicle dealer has clear title to the property or can provide clear title to the property upon payment by the manufacturer and is in a position to convey that title to the manufacturer.

(4) In the case of motor homes, this section applies only to manufacturer-initiated termination, cancellation, or nonrenewal of a franchise. [2009 c 12 § 1; 1989 c 415 § 8.]

Effective date—2009 c 12: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 25, 2009]." [2009 c 12 § 2.]

Title 47

PUBLIC HIGHWAYS AND TRANSPORTATION

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Chapter 47.01 RCW
DEPARTMENT OF TRANSPORTATION

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47.01.305 Environmental mitigation in highway construction projects—Public lands first or other sites that avoid loss of long-term, commercially significant agricultural lands. (1) For highway construction projects where the department considers agricultural lands of long-term commercial significance, as defined in RCW 36.70A.030, in reviewing and selecting sites to meet environmental mitigation requirements under the national environmental policy act (42 U.S.C. Sec. 4321 et seq.) and chapter 43.21C RCW, the department shall, to the greatest extent possible, consider using public land first.

(2) If public lands are not available that meet the required environmental mitigation needs, the department may use other sites while making every effort to avoid any net loss of agricultural lands that have a designation of long-term commercial significance. [2009 c 471 § 1.]

47.01.380 State route No. 520 improvements—Exceptions. The department shall not commence construction on any part of the state route number 520 bridge replacement and HOV project until a record of decision has been reached providing reasonable assurance that project impacts will be avoided, minimized, or mitigated as much as practicable to protect against further adverse impacts on neighborhood environmental quality as a result of repairs and improvements made to the state route number 520 bridge and its connecting roadways, and that any such impacts will be addressed through engineering design choices, mitigation measures, or a combination of both. The requirements of this section shall not apply to off-site pontoon construction supporting the state route number 520 bridge replacement and HOV project. The requirements of this section shall not apply during the 2009-2011 fiscal biennium. [2009 c 470 § 705; 2006 c 311 § 26.]

Effective date—2009 c 470: See note following RCW 46.68.170.

Findings—2006 c 311: See note following RCW 36.120.020.

47.01.390 Alaskan Way viaduct, Seattle Seawall, and state route No. 520 improvements—Requirements—Exceptions. (1) Prior to commencing construction on either project, the department of transportation must complete all of the following requirements for both the Alaskan Way viaduct and Seattle Seawall replacement project, and the state route number 520 bridge replacement and HOV project: (a) In accordance with the national environmental policy act, the department must designate the preferred alternative, prepare a substantial project mitigation plan, and complete a comprehensive cost estimate review using the department's cost estimate validation process, for each project; (b) in accordance with all applicable federal highway administration planning and project management requirements, the department must prepare a project finance plan for each project that clearly identifies secured and anticipated fund sources, cash flow timing requirements, and project staging and phasing plans if applicable; and (c) the department must report these results for each project to the joint transportation committee.

(2) The requirements of this section shall not apply to (a) utility relocation work, and related activities, on the Alaskan Way viaduct and Seattle Seawall replacement project and (b) off-site pontoon construction supporting the state route number 520 bridge replacement and HOV project.

(3) The requirements of subsection (1) of this section shall not apply during the 2007-2009 fiscal biennium.

(4) The requirements of subsection (1) of this section shall not apply during the 2009-2011 fiscal biennium. [2009 c 470 § 706; 2007 c 518 § 705; 2006 c 311 § 27.]

Effective date—2009 c 470: See note following RCW 46.68.170.

Severability—Effective date—2007 c 518: See notes following RCW 46.68.170.

Findings—2006 c 311: See note following RCW 36.120.020.

47.01.402 Alaskan Way viaduct replacement project—Deep bore tunnel option—Funding, accountability, and responsibility. (1) The legislature finds that the replacement of the vulnerable state route number 99 Alaskan Way viaduct is a matter of urgency for the safety of Washington's traveling public and the needs of the transportation system in central Puget Sound. The state route number 99 Alaskan Way viaduct is susceptible to damage, closure, or catastrophic failure from earthquakes and tsunamis. Additionally, the viaduct serves as a vital route for freight and passenger vehicles through downtown Seattle.

Since 2001, the department has undertaken an extensive evaluation of multiple options to replace the Alaskan Way viaduct, including an initial evaluation of seventy-six conceptual alternatives and a more detailed analysis of five alternatives in 2004. In addition to a substantial technical review, the department has also undertaken considerable public outreach, which included consultation with a stakeholder advisory committee that met sixteen times over a thirteen-month period.

Therefore, it is the conclusion of the legislature that time is of the essence, and that Washington state cannot wait for a disaster to make it fully appreciate the urgency of the need to replace this vulnerable structure. The state shall take the nec-

essary steps to expedite the environmental review and design processes to replace the Alaskan Way viaduct with a deep bore tunnel under First Avenue from the vicinity of the sports stadiums in Seattle to Aurora Avenue north of the Battery Street tunnel. The tunnel must include four general purpose lanes in a stacked formation.

(2) The state route number 99 Alaskan Way viaduct replacement project finance plan must include state funding not to exceed two billion four hundred million dollars and must also include no more than four hundred million dollars in toll revenue. These funds must be used solely to build a replacement tunnel, as described in subsection (1) of this section, and to remove the existing state route number 99 Alaskan Way viaduct. All costs associated with city utility relocations for state work as described in this section must be borne by the city of Seattle and provided in a manner that meets project construction schedule requirements as determined by the department. State funding is not authorized for any utility relocation costs, or for central seawall or waterfront promenade improvements.

(3) The department shall provide updated cost estimates for construction of the bored tunnel and also for the full Alaskan Way viaduct replacement project to the legislature and governor by January 1, 2010. The department must also consult with independent tunnel engineering experts to review the estimates and risk assumptions. The department shall not enter into a design-build contract for construction of the bored tunnel until the report in this section has been submitted.

(4) Any contract the department enters into related to construction of the deep bored tunnel must include incentives and penalties to encourage on-time completion of the project and to minimize the potential for cost overruns.

(5) It is important that the public and policymakers have accurate and timely access to information related to the Alaskan Way viaduct replacement project as it proceeds to, and during, construction of all aspects of the project, specifically including but not limited to information regarding costs, schedules, contracts, project status, and neighborhood impacts. Therefore it is the intent of the legislature that the state, city, and county departments of transportation establish a single source of accountability for integration, coordination, tracking, and information of all requisite components of the replacement project, which must include, at minimum:

(a) A master schedule of all subprojects included in the full replacement project or program; and

(b) A single point of contact for the public, media, stakeholders, and other interested parties.

(6)(a) The city and county departments of transportation shall be responsible for the cost, delivery, and associated risks of the project components for which each department is responsible, as outlined in the January 13, 2009, letter of agreement signed by the governor, city, and county.

(b) The state's contribution shall not exceed two billion four hundred million dollars. If costs exceed two billion four hundred million dollars, no more than four hundred million [dollars] of the additional costs shall be financed with toll revenue. Any costs in excess of two billion eight hundred million dollars shall be borne by property owners in the Seattle area who benefit from replacement of the existing viaduct with the deep bore tunnel.

(7) Compression brakes may be used by authorized motor vehicles in the deep bore tunnel in a manner consistent with the requirements of RCW 46.37.395. [2009 c 458 § 1.]

Alaskan Way viaduct replacement project—Deep bore tunnel option—Traffic and revenue study—2009 c 458: "The department of transportation must prepare a traffic and revenue study for a state route number 99 deep bore tunnel for the purpose of determining the facility's potential to generate toll revenue. The department shall regularly report to the transportation commission regarding the progress of the study for the purpose of guiding the commission's toll setting on the facility. The study must include the following information:

(1) An analysis of the potential diversion from state route number 99 to other parts of the transportation system resulting from tolls on the facility;

(2) An analysis of potential mitigation measures to offset or reduce diversion from state route number 99;

(3) A summary of the amount of revenue generated from tolling the deep bore tunnel; and

(4) An analysis of the impact of tolls on the performance of the facility.

The department must provide the results of the study to the governor and the legislature by January 2010." [2009 c 458 § 2.]

Effective date—2009 c 458: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2009." [2009 c 458 § 3.]

47.01.418 State route No. 520 improvements—Work group, subgroups—Corridor projects. (1)(a) The state route number 520 work group is created. The work group shall consist of the following members:

(i) The legislators from the forty-third legislative district;

(ii) The legislators from the forty-eighth legislative district;

(iii) The secretary of transportation;

(iv) Two legislators from each of the forty-sixth and forty-fifth legislative districts as jointly determined by the speaker of the house of representatives and the president of the senate;

(v) The chairs of the transportation committees of the legislature, who may each appoint one additional legislator from the joint transportation committee representing a legislative district outside of the state route number 520 corridor; and

(vi) The member of the transportation commission representing King county.

(b) The work group members shall elect two cochairs to consist of one legislative member representing the east side of the state route number 520 corridor and one legislative member representing the west side of the state route number 520 corridor. The work group shall conduct at least three meetings consisting of an initial meeting, a midcourse meeting, and a final meeting.

(2) The state route number 520 work group must:

(a) Review and recommend a financing strategy, in conjuction with the department, to fund the projects in the state route number 520 corridor that reflects the design options recommended under (b) of this subsection. The financing strategy must be based on a total cost of all the intended projects in the state route number 520 corridor that does not exceed four billion six hundred fifty million dollars;

(b) Recommend design options that provide for a full state route number 520 corridor project, including projects in the corridor for which the department applies for federal stimulus funds provided in the American recovery and reinvestment act of 2009, that meets the needs of the region's

transportation system while providing appropriate mitigation for the neighborhood and communities in the area directly impacted by the project; and

(c) Present a final report with recommendations on financing and design options to the legislature and the governor by January 1, 2010. The recommendations will inform the supplemental draft environmental impact statement process for the state route number 520 corridor. The process must continue through 2009.

(3) All design options considered or recommended by the state route number 520 work group must adhere to RCW 47.01.408.

(4) The state route number 520 work group shall form a westside subgroup to conduct a detailed review and make recommendations on design options on the west side of the corridor, which extends from the west end of the floating bridge to Interstate 5. The westside subgroup shall consult with neighborhood and community groups impacted by the potential design options. The work group may form an eastside subgroup to review current design options on the east side of the corridor, which extends from the east end of the floating bridge to state route number 202.

(5) The state route number 520 work group shall consult with the governor and legislators representing the primary users of the state route number 520 corridor.

(6) The department shall provide staff support to the state route number 520 work group. [2009 c 472 § 3.]

Reviser's note: 2009 c 472 § 3 directed that this section be codified in chapter 47.56 RCW, but codification in chapter 47.01 RCW appears to be more appropriate.

Intent—Effective date—2009 c 472: See notes following RCW 47.56.870.

47.01.425 Jurisdictional transfers. The legislature recognizes the need for a multijurisdictional body to review future requests for jurisdictional transfers. The commission shall receive petitions from cities, counties, or the state requesting any addition or deletion from the state highway system. The commission must utilize the criteria established in RCW 47.17.001 in evaluating petitions and to adopt rules for implementation of this process. The commission shall forward to the senate and house transportation committees by November 15th each year any recommended jurisdictional transfers. [2009 c 260 § 1; 2005 c 319 § 130; 1991 c 342 § 62. Formerly RCW 47.26.167.]

Findings—Intent—Part headings—Effective dates—2005 c 319: See notes following RCW 43.17.020.

Effective dates—1991 c 342: "(1) Sections 62 and 63 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect June 1, 1991.

(2) The remainder of this act shall take effect April 1, 1992." [1991 c 342 § 68.]

47.01.450 Funding special needs transportation, application for—Deference to agency council on coordinated transportation recommendations. (1) To be eligible for funding on or after January 1, 2010, any organization applying for state paratransit/special needs grants, as described in section 223(1), chapter 121, Laws of 2008, or for other funding provided for persons with special transportation needs, as defined in RCW 47.06B.012, must include in its application, in addition to meeting other eligibility requirements provided in law, an explanation of how the requested funding will advance efficiencies in, accessibility to, or coordination of transportation services provided to persons with special transportation needs as defined in RCW 47.06B.012.

(2) Unless otherwise required by law, in administering federal funding provided for special needs transportation purposes, including funding under SAFETEA-LU, the safe, accountable, flexible, efficient transportation equity act, P.L. 109-59, or its successor, the department shall give priority to projects that result in increased efficiencies in special needs transportation or improved coordination among special needs transportation service providers.

(3) In making final grant award determinations under subsection (1) of this section, the department shall seek input from the agency council on coordinated transportation, as provided in chapter 47.06B RCW, and shall give substantial deference to applications recommended by the council. [2009 c 515 § 16.]

Chapter 47.04 RCW
GENERAL PROVISIONS

Sections

47.04.300 Safe routes to school program.
47.04.310 Rental car company fees—Child restraint system availability.

47.04.300 Safe routes to school program. Concurrent with the federal safe, accountable, flexible, efficient transportation equity act of 2005, a safe routes to school program is established within the department. The purpose of the program is to:

(1) Enable and encourage children, including those with disabilities, to walk and bicycle to school;

(2) Make bicycling and walking to school a safer and more appealing transportation alternative, encouraging a healthy and active lifestyle from an early age; and

(3) Facilitate the planning, development, and implementation of projects and activities that will improve safety and reduce traffic, fuel consumption, and air pollution in the vicinity of schools. [2009 c 392 § 1.]

47.04.310 Rental car company fees—Child restraint system availability. (1) A rental car company may include separately stated surcharges, fees, or charges in a rental agreement, which may include, but may not be in any way limited to, vehicle license cost recovery fees, child restraint system rental fees, airport-related recovery fees, all applicable taxes, and government surcharges.

(2) If a rental car company includes a vehicle license cost recovery fee as a separately stated charge in a rental transaction, the amount of the fee must represent the rental car company's good faith estimate of the rental car company's average daily charge as calculated by the rental car company to recover its actual total annual rental car titling, registration, plating, and inspection costs in the state of Washington.

(3) If the total amount of the vehicle license cost recovery fees collected by a rental car company under this section in any calendar year exceeds the rental car company's actual

costs in the state of Washington to license, title, register, and plate rental cars and to have such rental cars inspected for that calendar year, the rental car company shall do both of the following:

(a) Retain the excess amount; and

(b) Adjust the estimated average per vehicle titling, licensing, plating, inspecting, and registration charge for the following calendar year by a corresponding amount.

(4) Nothing in this section prevents a rental car company from making adjustments to the vehicle license cost recovery fee during the calendar year.

(5) The following definitions apply to this section unless the context clearly requires otherwise:

(a) "Child restraint system rental fee" means a charge that may be separately stated and charged on the rental contract in a car rental transaction originating in Washington state to recover the costs associated with providing child restraint systems; and

(b) "Vehicle license cost recovery fee" means a charge that may be separately stated and charged on the rental contract in a car rental transaction originating in Washington state to recover costs incurred in the state of Washington by a rental car company to license, title, register, plate, and inspect rental cars.

(6)(a) If a rental car company includes a child restraint system rental fee as a separately stated charge in a rental transaction, the amount of the fee must represent no more than the rental car company's good faith estimate of the rental car company's costs to provide a child restraint system.

(b) If a rental car customer pays a child restraint system rental fee and the child restraint system is not available in a timely manner, as determined by the rental car customer, but in no case less than one hour after the arrival of the customer at the location where the customer receives the vehicle or vehicles, (i) the customer may cancel any reservation or other agreement for the rental of the vehicle or vehicles, (ii) any costs or penalties associated with the cancellation are void, and (iii) the customer is entitled to a full refund of any costs associated with the rental of the vehicle or vehicles. [2009 c 346 § 2.]

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

Finding—Intent—2009 c 346: "The legislature finds that there are car rental agreements entered into between car rental companies and their customers that include fees in addition to the rental rate and taxes. It is the intent of the legislature that such fees be clearly and separately stated in such agreements." [2009 c 346 § 1.]

Chapter 47.05 RCW

PRIORITY PROGRAMMING FOR HIGHWAY DEVELOPMENT

Sections

47.05.195 Highways of statewide significance—State route No. 164.

47.05.195 Highways of statewide significance—State route No. 164. The legislature designates state route number 164, as defined in RCW 47.17.320, as a highway of statewide significance. [2009 c 262 § 1.]

Chapter 47.06 RCW

STATEWIDE TRANSPORTATION PLANNING

Sections

47.06.140 Transportation facilities and services of statewide significance—Level of service standards.

47.06.140 Transportation facilities and services of statewide significance—Level of service standards. (1) The legislature declares the following transportation facilities and services to be of statewide significance: Highways of statewide significance as designated by the legislature under chapter 47.05 RCW, the interstate highway system, interregional state principal arterials including ferry connections that serve statewide travel, intercity passenger rail services, intercity high-speed ground transportation, major passenger intermodal terminals excluding all airport facilities and services, the freight railroad system, the Columbia/Snake navigable river system, marine port facilities and services that are related solely to marine activities affecting international and interstate trade, key freight transportation corridors serving these marine port facilities, and high capacity transportation systems serving regions as defined in RCW 81.104.015. The department, in cooperation with regional transportation planning organizations, counties, cities, transit agencies, public ports, private railroad operators, and private transportation providers, as appropriate, shall plan for improvements to transportation facilities and services of statewide significance in the statewide multimodal transportation plan. Improvements to facilities and services of statewide significance identified in the statewide multimodal transportation plan, or to highways of statewide significance designated by the legislature under chapter 47.05 RCW, are essential state public facilities under RCW 36.70A.200.

(2) The department of transportation, in consultation with local governments, shall set level of service standards for state highways and state ferry routes of statewide significance. Although the department shall consult with local governments when setting level of service standards, the department retains authority to make final decisions regarding level of service standards for state highways and state ferry routes of statewide significance. In establishing level of service standards for state highways and state ferry routes of statewide significance, the department shall consider the necessary balance between providing for the free interjurisdictional movement of people and goods and the needs of local communities using these facilities. When setting the level of service standards under this section for state ferry routes, the department may allow for a standard that is adjustable for seasonality. [2009 c 514 § 3. Prior: 2007 c 516 § 11; 2007 c 512 § 2; 1998 c 171 § 7.]

Findings—Intent—2009 c 514: See note following RCW 36.70A.085.

Findings—Intent—2007 c 516: See note following RCW 47.01.011.

Finding—Intent—2007 c 512: "The legislature finds from the 2006 Washington state ferries financing study that the state has limited information on state ferry users and markets. Accurate user and market information is vital in order to find ways to maximize the ferry systems' current capacity and to make the most efficient use of citizens' tax dollars. Therefore, it is the intent of the legislature that Washington state ferries be given the tools necessary to maximize the utilization of existing capacity and to make the most efficient use of existing assets and tax dollars. Furthermore, it is the intent of the legislature that the department of transportation adopt adaptive management practices in its operating and capital programs so as to keep the costs of

the Washington state ferries system as low as possible while continuously improving the quality and timeliness of service." [2007 c 512 § 1.]

Highways of statewide significance: RCW 47.05.022.

Chapter 47.06B RCW

COORDINATING SPECIAL NEEDS TRANSPORTATION

Sections

47.06B.010 Findings—Intent. *(Effective until June 30, 2012.)*
47.06B.020 Agency council on coordinated transportation—Creation, purpose, membership, staff, meetings. *(Effective until June 30, 2012.)*
47.06B.050 Council—Progress report. *(Effective until June 30, 2012.)*
47.06B.060 Council—Work group—Duties, membership, reports. *(Effective until June 30, 2012.)*
47.06B.070 Local coordinating coalitions—Creation, purpose, membership, meetings, staff. *(Effective until June 30, 2012.)*
47.06B.075 Local coordinating coalitions—Duties—Annual report to council. *(Effective until June 30, 2012.)*
47.06B.080 Local coordinating coalitions—Pilot project—Reports. *(Effective until June 30, 2012.)*
47.06B.900 Council—Termination.
47.06B.901 Repealer.

47.06B.010 Findings—Intent. ***(Effective until June 30, 2012.)*** The legislature finds that transportation systems for persons with special needs are not operated as efficiently as possible. In too many cases, programs established by the legislature to assist persons with special needs can not be accessed due to these inefficiencies and coordination barriers.

The legislature further finds that the transportation needs of each community are unique, and that transportation services may be improved by establishing a system of statewide oversight that seeks input, collaboration, and cooperation from and among all local service providers, including public agencies, private organizations, and community-based groups.

It is the intent of the legislature that public transportation agencies, pupil transportation programs, private nonprofit transportation providers, and other public agencies sponsoring programs that require transportation services coordinate those transportation services. Through coordination of transportation services, programs will achieve increased efficiencies and will be able to provide more rides to a greater number of persons with special needs. [2009 c 515 § 3; 2007 c 421 § 1; 1999 c 385 § 1; 1998 c 173 § 1.]

47.06B.020 Agency council on coordinated transportation—Creation, purpose, membership, staff, meetings. ***(Effective until June 30, 2012.)*** (1) The agency council on coordinated transportation is created. The purpose of the council is to advance and improve accessibility to and coordination of special needs transportation services statewide. The council is composed of fourteen voting members and four nonvoting, legislative members.

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

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

(b) Three persons who are consumers of special needs transportation services, which must include:

(i) One person designated by the executive director of the governor's committee on disability issues and employment; and

(ii) One person who is designated by the executive director of the developmental disabilities council;

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

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

(e) One of the following:

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

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

(f) One person who represents regional transportation planning organizations and metropolitan planning organizations;

(g) One representative of brokers who provide nonemergency, medically necessary trips to persons with special transportation needs under the medicaid program administered by the department of social and health services;

(h) One representative from the Washington state department of veterans affairs; and

(i) One representative of the state association of counties.

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

(a) Two members from the house of representatives, one from each of the two largest caucuses, appointed by the speaker of the house of representatives, including at least one member from the house transportation policy and budget committee or the house appropriations committee; and

(b) Two members from the senate, one from each of the two largest caucuses, appointed by the president of the senate, including at least one member from the senate transportation committee or the senate ways and means committee.

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

(5) The council shall vote on an annual basis to elect one of its voting members to serve as chair. The position of chair must rotate among the represented agencies, associations, and interest groups at least every two years. If the position of chair is vacated for any reason, the secretary of transportation or the secretary's designee shall serve as acting chair until the next regular meeting of the council, at which time the members will elect a chair.

(6) The council shall periodically assess its membership to ensure that there exists a balanced representation of persons with special transportation needs and providers of special transportation needs services. Recommendations for modifying the membership of the council must be included in the council's biennial report to the legislature as provided in RCW 47.06B.050.

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

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

(9) The meetings of the council must be open to the public, with the agenda published in advance, and minutes kept and made available to the public. The public notice of the meetings must indicate that accommodations for persons with disabilities will be made available upon request.

(10) All meetings of the council must be held in locations that are readily accessible to public transportation, and must be scheduled for times when public transportation is available.

(11) The council shall make an effort to include presentations by and work sessions including persons with special transportation needs. [2009 c 515 § 4; 2007 c 421 § 2; 1998 c 173 § 2.]

47.06B.050 Council—Progress report. ***(Effective until June 30, 2012.)*** The agency council on coordinated transportation shall submit a progress report to the legislature by December 1, 2009, and every other year thereafter. The report must describe the council's progress in achieving its objectives and in attaining the applicable goals identified in the council's biennial work plan and highlight any problems encountered in achieving these goals. The report must also include the required *performance measure evaluations established in RCW 47.06B.030(4). The information will be reported in a form established by the council. [2009 c 515 § 8; 2007 c 421 § 6.]

***Reviser's note:** Section 5, chapter 515, Laws of 2009, which established the performance measure evaluations, was vetoed by the governor.

47.06B.060 Council—Work group—Duties, membership, reports. ***(Effective until June 30, 2012.)*** (1) In 2007, the legislature directed the joint transportation committee to conduct a study of special needs transportation to examine and evaluate the effectiveness of special needs transportation in the state. A particular goal of the study was to explore opportunities to enhance coordination of special needs transportation programs to ensure that they are delivered efficiently and result in improved access and increased mobility options for their clients. It is the intent of the legislature to further consider some of the recommendations, and to implement many of these recommendations in the form of two pilot projects that will test the potential for applying these recommendations statewide in the future.

(2) The legislature is aware that the department of social and health services submitted an application in December of 2008 to the federal centers for medicare and medicaid services, seeking approval to use the medical match system, a federal funding system that has different requirements from the federal administrative match system currently used by the department. It is the intent of the legislature to advance the goals of chapter 515, Laws of 2009 and the recommendations of the study identified in subsection (1) of this section without jeopardizing the application made by the department.

(3) By August 15, 2009, the agency council on coordinated transportation shall appoint a work group for the purpose of identifying relevant federal requirements related to special needs transportation, and identifying solutions to streamline the requirements and increase efficiencies in transportation services provided for persons with special transportation needs. To advance its purpose, the work group shall work with relevant federal representatives and agencies to identify and address various challenges and barriers.

(4) Membership of the work group must include, but not be limited to, one or more representatives from:

(a) The departments of transportation, veterans affairs, health, and social and health services;

(b) Medicaid nonemergency medical transportation brokers;

(c) Public transit agencies;

(d) Regional and metropolitan transportation planning organizations, including a representative of the regional transportation planning organization or organizations that provide staff support to the local coordinating coalition established under RCW 47.06B.070;

(e) Indian tribes;

(f) The agency council on coordinated transportation;

(g) The local coordinating coalitions established under RCW 47.06B.070; and

(h) The office of the superintendent of public instruction.

(5) The work group shall elect one or more of its members to service as chair or cochairs.

(6) The work group shall immediately contact representatives of the federal congressional delegation for Washington state and the relevant federal agencies and coordinating authorities including, but not limited to, the federal transit administration, the United States department of health and human services, and the interagency transportation coordinating council on access and mobility, and invite the federal representatives to work collaboratively to:

(a) Identify transportation definitions and terminology used in the various relevant state and federal programs, and establish consistent transportation definitions and terminology. For purposes of this subsection, relevant state definitions exclude terminology that requires a medical determination, including whether a trip or service is medically necessary;

(b) Identify restrictions or barriers that preclude federal, state, and local agencies from sharing client lists or other client information, and make progress towards removing any restrictions or barriers;

(c) Identify relevant state and federal performance and cost reporting systems and requirements, and work towards establishing consistent and uniform performance and cost reporting systems and requirements; and

(d) Explore, subject to federal approval, opportunities to test cost allocation models, including the pilot projects established in RCW 47.06B.080, that:

(i) Allow for cost sharing among public paratransit and medicaid nonemergency medical trips; and

(ii) Capture the value of medicaid trips provided by public transit agencies for which they are not currently reimbursed with a funding match by federal medicaid dollars.

(7) By December 1, 2009, the work group shall submit a report to the joint transportation committee that explains the

progress made towards the goals of this section and identifies any necessary legislative action that must be taken to implement all the provisions of this section. A second progress report must be submitted to the joint transportation committee by June 1, 2010, and a final report must be submitted to the joint transportation committee by December 1, 2010. [2009 c 515 § 1.]

47.06B.070 Local coordinating coalitions--Creation, purpose, membership, meetings, staff. ***(Effective until June 30, 2012.)*** (1) A local coordinating coalition is created in each nonemergency medical transportation brokerage region, as designated by the department of social and health services, that encompasses:

(a) A single county that has a population of more than seven hundred fifty thousand but less than one million; and

(b) Five counties, and is comprised of at least one county that has a population of more than four hundred thousand.

(2) The purpose of a local coordinating coalition is to advance local efforts to coordinate and maximize efficiencies in special needs transportation programs and services, contributing to the overall objectives and goals of the agency council on coordinated transportation. The local coordinating coalition shall serve in an advisory capacity to the agency council on coordinated transportation by providing the council with a focused and ongoing assessment of the special transportation needs and services provided within its region.

(3) The composition and size of each local coordinating coalition may vary by region. Local coordinating coalition members, appointed by the chair of the agency council on coordinated transportation to two-year terms, must reflect a balanced representation of the region's providers of special needs transportation services and must include:

(a) Members of existing local coordinating coalitions, with approval by those members;

(b) One or more representatives of the public transit agency or agencies serving the region;

(c) One or more representatives of private service providers;

(d) A representative of civic or community-based service providers;

(e) A consumer of special needs transportation services;

(f) A representative of nonemergency medical transportation medicaid brokers;

(g) A representative of social and human service programs;

(h) A representative of local high school districts; and

(i) A representative from the Washington state department of veterans affairs.

(4) Each coalition shall vote on an annual basis to elect one of its members to serve as chair. The position of chair must rotate among the represented members at least every two years. If the position of chair is vacated for any reason, the member representing the regional transportation planning organization described in subsection (6) of this section shall serve as acting chair until the next regular meeting of the coalition, at which time the members will elect a chair.

(5) Regular meetings of the local coordinating coalition may be convened at the call of the chair or by a majority of the members. Meetings must be open to the public, and held in locations that are readily accessible to public transportation.

(6) The regional transportation planning organization, as described in chapter 47.80 RCW, serving the region in which the local coordinating coalition is created shall provide necessary staff support for the local coordinating coalition. In regions served by more than one regional transportation planning organization, unless otherwise agreed to by the relevant planning organizations, the regional transportation planning organization serving the largest population within the region shall provide the necessary staff support. [2009 c 515 § 9.]

47.06B.075 Local coordinating coalitions—Duties—Annual report to council. ***(Effective until June 30, 2012.)*** Local coordinating coalitions established under RCW 47.06B.070 shall:

(1) Identify, to the greatest extent possible, all local transportation facilities, services, and providers serving persons with special transportation needs in the region, including public transit agencies, private companies, nonprofit organizations, and community-based groups. For each service provider, the coalition shall identify the boundaries within which services are provided;

(2) Identify local service needs, including connectivity gaps and other barriers to reliable and efficient transportation within and across service boundaries;

(3) Consider strategies to address the local service needs and gaps identified in subsection (2) of this section;

(4) In consultation with the agency council on coordinated transportation, collaborate with local service providers and operators to identify and propose common connectivity standards. The connectivity standards must, at a minimum, address signage, transit information, schedule coordination, and services provided to address access to and from a transit stop or facility; and

(5) Beginning December 1, 2009, submit an annual report to the agency council on coordinated transportation that must, at a minimum, describe local efforts to coordinate and maximize efficiencies in special needs transportation programs and services, and progress made in addressing the duties described in this section. [2009 c 515 § 10.]

47.06B.080 Local coordinating coalitions—Pilot project—Reports. ***(Effective until June 30, 2012.)*** (1) In addition to the duties identified in RCW 47.06B.070 and 47.06B.075, each local coordinating coalition shall develop or implement a pilot project within the coalition's region, as described under RCW 47.06B.070(1), for the purpose of demonstrating cost sharing and cost saving opportunities as described in subsection (2) of this section, and shall keep the agency council on coordinated transportation informed of progress made toward implementing the pilot project. In developing or implementing the pilot project, the local coordinating coalition shall collaborate with the appropriate federal agencies, including the federal transit authority and United States department of health and human services, and may collaborate with other agencies and organizations as deemed appropriate.

(2) The pilot project must be designed to:

(a) Demonstrate opportunities for cost sharing, including but not limited to opportunities among public paratransit and medicaid nonemergency medical trips; and

(b) Test the feasibility of capturing the value of medicaid trips provided by public transit agencies for which they are not currently reimbursed with a funding match by federal medicaid dollars.

(3) By December 1, 2009, and by June 1, 2010, each local coordinating coalition shall submit a status report to the joint transportation committee and agency council on coordinated transportation describing progress made in implementing the pilot project. By December 1, 2010, each local coordinating coalition shall issue a final report to the joint transportation committee and the agency council on coordinated transportation describing progress made in implementing the pilot project. [2009 c 515 § 11.]

47.06B.900 Council—Termination. The agency council on coordinated transportation is terminated on June 30, 2011, as provided in RCW 47.06B.901. [2009 c 515 § 17; 2007 c 421 § 8; 1999 c 385 § 7; 1998 c 173 § 6.]

47.06B.901 Repealer. The following acts or parts of acts, as now existing or hereafter amended, are each repealed, effective June 30, 2012:

(1) RCW 47.06B.010 and 2009 c 515 § 3, 2007 c 421 § 1, 1999 c 385 § 1, & 1998 c 173 § 1;

(2) RCW 47.06B.012 and 1999 c 385 § 2;

(3) RCW 47.06B.020 and 2009 c 515 § 4, 2007 c 421 § 2, & 1998 c 173 § 2;

(4) RCW 47.06B.030 and *2009 c 515 § 5, 2007 c 421 § 3, 1999 c 385 § 5, & 1998 c 173 § 3;

(5) RCW 47.06B.040 and 2007 c 421 § 4 & 1999 c 385 § 6;

(6) RCW 47.06B.050 and 2009 c 515 § 8 & 2007 c 421 § 6;

(7) RCW 47.06B.060;

(8) *Section 2 of this act;

(9) *Section 6 of this act;

(10) *Section 7 of this act;

(11) RCW 47.06B.070;

(12) RCW 47.06B.075; and

(13) RCW 47.06B.080. [2009 c 515 § 18; 2007 c 421 § 9; 1999 c 385 § 8; 1998 c 173 § 7.]

***Reviser's note:** Sections 2 and 5 through 7 of this act [2009 c 515] were vetoed by the governor.

Chapter 47.10 RCW
HIGHWAY CONSTRUCTION BONDS

Sections

47.10.867 Bond issue authorized—Appropriation of proceeds.

STATE ROUTE NO. 520 CORRIDOR PROJECTS—2009 ACT

47.10.879 Bond issue authorized.
47.10.880 Administration and amount of sale.
47.10.881 Proceeds—Deposit and use.
47.10.882 Toll facility bond retirement account.
47.10.883 Statement of general obligation—Pledge of toll revenue and excise taxes.
47.10.884 Repayment procedure.
47.10.885 Equal charge against motor vehicle and special fuels excise taxes.
47.10.886 Toll revenue bonds.
47.10.887 State finance committee authority—Department of transportation approval of actions—Bond owners' rights.
47.10.888 Definitions.

47.10.867 Bond issue authorized—Appropriation of proceeds. For the purpose of providing funds for the planning, design, construction, reconstruction, and other necessary costs for transportation projects, the state finance committee is authorized to issue general obligation bonds of the state of Washington in the sum of two hundred forty-nine million five hundred thousand dollars, or as much thereof as may be required, to finance these projects and all costs incidental thereto. Bonds authorized in this section may be sold at such price as the state finance committee shall determine. No bonds authorized in this section may be offered for sale without prior legislative appropriation of the net proceeds of the sale of the bonds. [2009 c 498 § 6; 2003 c 147 § 7.]

Effective date—2003 c 147: See note following RCW 47.10.861.

STATE ROUTE NO. 520 CORRIDOR PROJECTS—2009 ACT

47.10.879 Bond issue authorized. In order to provide funds necessary for the location, design, right-of-way, and construction of the state route number 520 corridor projects, as allowed in section 2, chapter 472, Laws of 2009, there shall be issued and sold upon the request of the department of transportation a total of one billion nine hundred fifty million dollars of general obligation bonds of the state of Washington first payable from toll revenue and excise taxes on motor vehicle and special fuels in accordance with RCW 47.10.883. [2009 c 498 § 8.]

47.10.880 Administration and amount of sale. Upon the request of the department of transportation, the state finance committee shall supervise and provide for the issuance, sale, and retirement of the bonds authorized by chapter 498, Laws of 2009 in accordance with chapter 39.42 RCW. Bonds authorized by chapter 498, Laws of 2009 shall be sold in the manner, at time or times, in amounts, and at the price as the state finance committee shall determine. No bonds may be offered for sale without prior legislative appropriation of the net proceeds of the sale of the bonds. [2009 c 498 § 9.]

47.10.881 Proceeds—Deposit and use. The proceeds from the sale of bonds authorized by chapter 498, Laws of 2009 shall be deposited in the state route number 520 corridor account created under chapter 472, Laws of 2009, and shall be available only for the purposes enumerated in RCW 47.10.879, for the payment of bond anticipation notes or other interim financing, if any, capitalizing interest on the bonds, and for the payment of bond issuance costs, including the costs of underwriting. [2009 c 498 § 10.]

47.10.882 Toll facility bond retirement account. The toll facility bond retirement account is created in the state treasury for the purpose of payment of the principal of and interest and premium on bonds. Both principal of and interest on the bonds issued for the purposes of chapter 498, Laws of 2009 shall be payable from the toll facility bond retirement

account. The state finance committee may provide that special subaccounts be created in the account to facilitate payment of the principal of and interest on the bonds. The state finance committee shall, on or before June 30th of each year, certify to the state treasurer the amount required for principal and interest on the bonds in accordance with the bond proceedings. [2009 c 498 § 11.]

47.10.883 Statement of general obligation—Pledge of toll revenue and excise taxes. Bonds issued under the authority of this section and RCW 47.10.879, 47.10.884, and 47.10.885 shall distinctly state that they are a general obligation of the state of Washington, shall pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and shall contain an unconditional promise to pay such principal and interest as the same shall become due. The principal of and interest on the bonds shall be first payable in the manner provided in this section and RCW 47.10.879, 47.10.884, and 47.10.885 from toll revenue and then from proceeds of excise taxes on motor vehicle and special fuels to the extent toll revenue is not available for that purpose. Toll revenue and the state excise taxes on motor vehicle and special fuels imposed by chapters 82.36 and 82.38 RCW are hereby pledged to the payment of any bonds and the interest thereon issued under the authority of this section and RCW 47.10.879, 47.10.884, and 47.10.885, and the legislature agrees to continue to impose these toll charges on the state route number 520 corridor, and on any other eligible toll facility designated by the legislature and on which the imposition of tolls is authorized by the legislature in respect of the bonds, and excise taxes on motor vehicle and special fuels in amounts sufficient to pay, when due, the principal and interest on all bonds issued under the authority of this section and RCW 47.10.879, 47.10.884, and 47.10.885. [2009 c 498 § 12.]

47.10.884 Repayment procedure. For bonds issued under the authority of this section and RCW 47.10.879, 47.10.883, and 47.10.885, the state treasurer shall first withdraw toll revenue from the state route number 520 corridor account created under chapter 472, Laws of 2009, and, to the extent toll revenue is not available, excise taxes on motor vehicle and special fuels in the motor vehicle fund and deposit in the toll facility bond retirement account, or a special subaccount in the account, such amounts, and at such times, as are required by the bond proceedings.

Any excise taxes on motor vehicle and special fuels required for bond retirement or interest on the bonds authorized by this section and RCW 47.10.879, 47.10.883, and 47.10.885 shall be taken from that portion of the motor vehicle fund that results from the imposition of excise taxes on motor vehicle and special fuels and which is, or may be, appropriated to the department for state highway purposes. Funds required shall never constitute a charge against any other allocations of motor vehicle fuel and special fuel tax revenues to the state, counties, cities, and towns unless the amount arising from excise taxes on motor vehicle and special fuels distributed to the state in the motor vehicle fund proves insufficient to meet the requirements for bond retirement or interest on any such bonds.

Any payments for bond retirement or interest on the bonds taken from other revenues from the motor vehicle fuel or special fuel taxes that are distributable to the state, counties, cities, and towns shall be repaid from available toll revenue in the manner provided in the bond proceedings or, if toll revenue is not available for that purpose, from the first excise taxes on motor vehicle and special fuels distributed to the motor vehicle fund not required for bond retirement or interest on the bonds. Any excise taxes on motor vehicle and special fuels required for bond retirement or interest on the bonds authorized by this section and RCW 47.10.879, 47.10.883, and 47.10.885 shall be reimbursed to the motor vehicle fund from toll revenue in the manner and with the priority specified in the bond proceedings. [2009 c 498 § 13.]

47.10.885 Equal charge against motor vehicle and special fuels excise taxes. Bonds issued under the authority of RCW 47.10.879, 47.10.883, and 47.10.884 and this section and any other general obligation bonds of the state of Washington that have been or that may be authorized and that pledge motor vehicle and special fuels excise taxes for the payment of principal and interest thereon shall be an equal charge against the revenues from such motor vehicle and special fuels excise taxes. [2009 c 498 § 14.]

47.10.886 Toll revenue bonds. If and to the extent that the state finance committee determines, in consultation with the department of transportation and the tolling authority, that it will be beneficial for the state to issue any bonds authorized in RCW 47.10.879 and 47.10.883 through 47.10.885 as toll revenue bonds rather than as general obligation bonds, the state finance committee is authorized to issue and sell, upon the request of the department of transportation, such bonds as toll revenue bonds and not as general obligation bonds. Notwithstanding RCW 47.10.883, each such bond shall contain a recital that payment or redemption of the bond and payment of the interest and any premium thereon is payable solely from and secured solely by a direct pledge, charge, and lien upon toll revenue and is not a general obligation of the state to which the full faith and credit of the state is pledged.

Toll revenue is hereby pledged to the payment of any bonds and the interest thereon issued under the authority of this section, and the legislature agrees to continue to impose these toll charges on the state route number 520 corridor, and on any other eligible toll facility designated by the legislature and on which the imposition of tolls is authorized by the legislature in respect of the bonds, in amounts sufficient to pay, when due, the principal and interest on all bonds issued under the authority of this section. [2009 c 498 § 16.]

47.10.887 State finance committee authority—Department of transportation approval of actions—Bond owners' rights. The state finance committee may determine and include in any resolution authorizing the issuance of any bonds under chapter 498, Laws of 2009, such terms, provisions, covenants, and conditions as it may deem appropriate in order to assist with the marketing and sale of the bonds, confer rights upon the owners of bonds, and safeguard rights of the owners of bonds including, among other things:

(1) Provisions regarding the maintenance and operation of eligible toll facilities;

(2) The pledges, uses, and priorities of application of toll revenue;

(3) Provisions that bonds shall be payable from and secured solely by toll revenue as provided by RCW 47.10.886, or shall be payable from and secured by both toll revenue and by a pledge of excise taxes on motor vehicle and special fuels and the full faith and credit of the state as provided in RCW 47.10.879 and 47.10.883 through 47.10.885;

(4) In consultation with the department of transportation and the tolling authority, financial covenants requiring that the eligible toll facilities must produce specified coverage ratios of toll revenue to debt service on bonds;

(5) The purposes and conditions that must be satisfied prior to the issuance of any additional bonds that are to be payable from and secured by any toll revenue on an equal basis with previously issued and outstanding bonds payable from and secured by toll revenue;

(6) Provisions that bonds for which any toll revenue are pledged, or for which a pledge of any toll revenue may be reserved, may be structured on a senior, parity, subordinate, or special lien basis in relation to any other bonds for which toll revenue is pledged, with respect to toll revenue only; and

(7) Provisions regarding reserves, credit enhancement, liquidity facilities, and payment agreements with respect to bonds.

Notwithstanding the foregoing, covenants and conditions detailing the character of management, maintenance, and operation of eligible toll facilities, insurance for eligible toll facilities, financial management of toll revenue, and disposition of eligible toll facilities must first be approved by the department of transportation.

The owner of any bond may by mandamus or other appropriate proceeding require and compel performance of any duties imposed upon the tolling authority and the department of transportation and their respective officials, including any duties imposed upon or undertaken by them or by their respective officers, agents, and employees, in connection with the construction, maintenance, and operation of eligible toll facilities and in connection with the collection, deposit, investment, application, and disbursement of the proceeds of the bonds and toll revenue. [2009 c 498 § 17.]

47.10.888 Definitions. (1) For the purposes of chapter 498, Laws of 2009, "toll revenue" means all toll receipts, all interest income derived from the investment of toll receipts, and any gifts, grants, or other funds received for the benefit of eligible toll facilities. However, for the purpose of any pledge of toll revenue to the payment of particular bonds issued under chapter 498, Laws of 2009, "toll revenue" means and includes only such toll revenue or portion thereof that is pledged to the payment of those bonds in the resolution authorizing the issuance of such bonds. Toll revenue constitutes "fees and revenues derived from the ownership or operation of any undertaking, facility, or project" as that phrase is used in Article VIII, section 1(c)(1) of the state Constitution.

(2) For the purposes of chapter 498, Laws of 2009, "tolling authority" has the same meaning as in RCW 47.56.810. [2009 c 498 § 18.]

Chapter 47.12 RCW

ACQUISITION AND DISPOSITION OF STATE HIGHWAY PROPERTY

Sections

47.12.244 Advance right-of-way revolving fund.

47.12.244 Advance right-of-way revolving fund. There is created the "advance right-of-way revolving fund" in the custody of the treasurer, into which the department is authorized to deposit directly and expend without appropriation:

(1) An initial deposit of ten million dollars from the motor vehicle fund included in the department of transportation's 1991-93 budget;

(2) All moneys received by the department as rental income from real properties that are not subject to federal aid reimbursement, except moneys received from rental of capital facilities properties as defined in *chapter 47.13 RCW; and

(3) Any federal moneys available for acquisition of right-of-way for future construction under the provisions of section 108 of Title 23, United States Code.

During the 2007-2009 and 2009-2011 fiscal biennia, the legislature may transfer from the advance right-of-way revolving fund to the motor vehicle account amounts as reflect the excess fund balance of the advance right-of-way revolving fund. [2009 c 470 § 709; 2007 c 518 § 707; 1991 c 291 § 2; 1984 c 7 § 125; 1969 ex.s. c 197 § 7.]

***Reviser's note:** Chapter 47.13 RCW was repealed by 1999 c 94 § 33, effective July 1, 1999.

Effective date—2009 c 470: See note following RCW 46.68.170.

Severability—Effective date—2007 c 518: See notes following RCW 46.68.170.

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

Chapter 47.17 RCW

STATE HIGHWAY ROUTES

Sections

47.17.577 State route No. 397.

47.17.577 State route No. 397. A state highway to be known as state route number 397 is established as follows:

Beginning at state route number 82 at exit 114, thence easterly, northwesterly, and northerly across the Columbia River, thence easterly and northerly to a junction with state route number 395 in Pasco. [2009 c 184 § 1; 1993 c 430 § 5; 1991 c 342 § 31.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

Chapter 47.26 RCW

DEVELOPMENT IN URBAN AREAS—URBAN ARTERIALS

Sections

47.26.167 Recodified as RCW 47.01.425.

47.26.167 Recodified as RCW 47.01.425. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 47.29 RCW

TRANSPORTATION INNOVATIVE PARTNERSHIPS

Sections

47.29.170 Unsolicited proposals.

47.29.170 Unsolicited proposals. Before accepting any unsolicited project proposals, the commission must adopt rules to facilitate the acceptance, review, evaluation, and selection of unsolicited project proposals. These rules must include the following:

(1) Provisions that specify unsolicited proposals must meet predetermined criteria;

(2) Provisions governing procedures for the cessation of negotiations and consideration;

(3) Provisions outlining that unsolicited proposals are subject to a two-step process that begins with concept proposals and would only advance to the second step, which are fully detailed proposals, if the commission so directed;

(4) Provisions that require concept proposals to include at least the following information: Proposers' qualifications and experience; description of the proposed project and impact; proposed project financing; and known public benefits and opposition; and

(5) Provisions that specify the process to be followed if the commission is interested in the concept proposal, which must include provisions:

(a) Requiring that information regarding the potential project would be published for a period of not less than thirty days, during which time entities could express interest in submitting a proposal;

(b) Specifying that if letters of interest were received during the thirty days, then an additional sixty days for submission of the fully detailed proposal would be allowed; and

(c) Procedures for what will happen if there are insufficient proposals submitted or if there are no letters of interest submitted in the appropriate time frame.

The commission may adopt other rules as necessary to avoid conflicts with existing laws, statutes, or contractual obligations of the state.

The commission may not accept or consider any unsolicited proposals before July 1, 2011. [2009 c 470 § 702; 2007 c 518 § 702; 2006 c 370 § 604; 2005 c 317 § 17.]

Effective date—2009 c 470: See note following RCW 46.68.170.

Severability—Effective date—2007 c 518: See notes following RCW 46.68.170.

Severability—2006 c 370: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2006 c 370 § 701.]

Effective date—2006 c 370: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 31, 2006]." [2006 c 370 § 702.]

Chapter 47.36 RCW

TRAFFIC CONTROL DEVICES

Sections

47.36.025 Vehicle-activated traffic control signals—Detection of motorcycles and bicycles.

47.36.025 Vehicle-activated traffic control signals—Detection of motorcycles and bicycles. (1) For the purposes of this section:

(a) "Arterial" means a public road or highway that is designated or qualifies as a principal or minor arterial under a state or local law, ordinance, regulation, or plan.

(b) "Bicycle" means a human-powered vehicle with metallic wheels at least sixteen inches in diameter or with metallic braking strips and metallic components, not necessarily including the frame or fork, which may be lawfully ridden on a public road or highway.

(c) "Bicycle route" means a route (i) that is designated as a route for bicycle use in a state or local law, ordinance, rule, or plan, or (ii) that provides bicycle access to urban areas that are not reasonably and conveniently accessible through other bicycle routes. The level of existing or projected use by bicyclists is a factor to consider in determining whether a bicycle route provides access that is not reasonably and conveniently available from other bicycle routes. An intersection that provides necessary linkages in a bicycle route or between routes is considered a part of the bicycle route or routes.

(d) "Design complete" means that all major design work for a new vehicle-activated traffic control signal has been completed and that the funding necessary for complete construction of the vehicle-activated traffic control signal has been firmly secured.

(e) "Existing vehicle-activated traffic control signal" means a vehicle-activated traffic control signal that is in use or design complete on or before July 26, 2009.

(f)(i) "Motorcycle" means a motor vehicle designed to travel on not more than three wheels in contact with the ground, on which the driver:

(A) Rides on a seat or saddle and the motor vehicle is designed to be steered with a handle bar; or

(B) Rides on a seat in a partially or completely enclosed seating area that is equipped with safety belts and the motor vehicle is designed to be steered with a steering wheel.

(ii) "Motorcycle" excludes a farm tractor, a power wheelchair, an electric personal assistive mobility device, a motorized foot scooter, an electric-assisted bicycle, and a moped.

(g) "Restricted right turn lane" means a right turn only lane where a right turn is not allowed after stopping but only upon a green signal.

(h) "Routinely and reliably detect motorcycles and bicycles" means that the detection equipment at a vehicle-activated traffic control signal is capable of detecting and will reliably detect a motorcycle or bicycle (i) when the motorcycle or bicycle is present immediately before a stop line or crosswalk in the center of a lane at an intersection or road entrance to such an intersection, or (ii) when the motorcycle or bicycle is present at marked detection areas.

(i) "Vehicle-activated traffic control signal" means a traffic control signal on a public road or highway that detects the presence of a vehicle as a means to change a signal phase.

(2) During routine maintenance or monitoring activities, but subject to the availability of funds:

(a) All existing vehicle-activated traffic control signals that do not currently routinely and reliably detect motorcycles and bicycles must be adjusted to do so to the extent that the existing equipment is capable consistent with safe traffic control. Priority must be given to existing vehicle-activated traffic control signals for which complaints relating to motorcycle or bicycle detection have been received and existing vehicle-activated traffic control signals that are otherwise identified as a detection problem for motorcyclists or bicyclists, or both. Jurisdictions operating existing vehicle-activated traffic control signals shall establish and publicize a procedure for filing these complaints in writing or by e-mail, and maintain a record of these complaints and responses; and

(b) Where motorcycle and bicycle detection is limited to certain areas other than immediately before the stop line or crosswalk in the center of a lane at an existing vehicle-activated traffic control signal, those detection areas must be clearly marked on the pavement at left turn lanes, through lanes, and limited right turn lanes. These detection areas must also be marked to allow a bicyclist to leave a bicycle lane to enter a detection area, if necessary, to cross an intersection. Pavement markings must be consistent with the standards described in the state of Washington's "Manual on Uniform Traffic Control Devices for Streets and Highways" obtainable from the department of transportation.

(3)(a) If at least a substantial portion of detection equipment at an existing vehicle-activated traffic control signal on an arterial or bicycle route is scheduled to be replaced or upgraded, the replaced or upgraded detection equipment must routinely and reliably detect motorcycles and bicycles. For purposes of this subsection (3)(a), "substantial portion" means that the proposed replacement or upgrade will cost more than twenty percent of the cost of full replacement or upgraded detection equipment that would routinely and reliably detect motorcycles and bicycles.

(b) If at least a substantial portion of detection equipment at an existing vehicle-activated traffic control signal on a public road or highway that is not an arterial or bicycle route is scheduled to be replaced or upgraded, the replaced or upgraded detection equipment must routinely and reliably detect motorcycles and bicycles. For purposes of this subsection (3)(b), "substantial portion" means that the proposed replacement or upgrade will cost more than fifty percent of the cost of full replacement or upgraded detection equipment that would routinely and reliably detect motorcycles and bicycles.

(4) All vehicle-activated traffic control signals that are design complete and put in operation after July 26, 2009, must be designed and operated, when in use, to routinely and reliably detect motorcycles and bicycles, including the detection of bicycles in bicycle lanes that cross an intersection. [2009 c 275 § 10.]

Chapter 47.38 RCW
ROADSIDE AREAS—SAFETY REST AREAS

Sections

47.38.070 Electric vehicle infrastructure.
47.38.075 Electrical outlets for electric vehicles at rest areas—Battery exchange and charging station installation and operation.

47.38.070 Electric vehicle infrastructure. (1) As a necessary and desirable step to spur public and private investment in electric vehicle infrastructure in accordance with section 1, chapter 459, Laws of 2009, and to begin implementing the provisions of RCW 43.19.648, the legislature authorizes an alternative fuels corridor pilot project capable of supporting electric vehicle charging and battery exchange technologies.

(2) To the extent permitted under federal programs, rules, or law, the department may enter into partnership agreements with other public and private entities for the use of land and facilities along state routes and within interstate highway rights-of-way for an alternative fuels corridor pilot project. At a minimum, the pilot project must:

(a) Limit renewable fuel and vehicle technology offerings to those with a forecasted demand over the next fifteen years and approved by the department;

(b) Ensure that a pilot project site does not compete with existing retail businesses in the same geographic area for the provision of the same refueling services, recharging technologies, or other retail commercial activities;

(c) Provide existing truck stop operators and retail truck refueling businesses with an absolute right of first refusal over the offering of refueling services to class six trucks with a maximum gross vehicle weight of twenty-six thousand pounds within the same geographic area identified for a possible pilot project site;

(d) Reach agreement with the department of services for the blind ensuring that any activities at host sites do not materially affect the revenues forecasted from their vending operations at each site;

(e) Regulate the internal rate of return from the partnership, including provisions to reduce or eliminate the level of state support once the partnership attains economic self-sufficiency;

(f) Be limited to not more than five locations on state-owned land within federal interstate rights-of-way or state highway rights-of-way in Washington; and

(g) Be limited in duration to a term of years reasonably necessary for the partnership to recover the cost of capital investments, plus the regulated internal rate of return.

(3) The department is not responsible for providing capital equipment nor operating refueling or recharging services. The department must provide periodic status reports on the pilot project to the office of financial management and the relevant standing committees of the legislature not less than every biennium.

(4) The provisions of this section are subject to the availability of existing funds. However, capital improvements under this section must be funded with federal or private funds. [2009 c 459 § 14.]

Finding—Purpose—2009 c 459: See note following RCW 47.80.090.

Regional transportation planning organizations—Electric vehicle infrastructure: RCW 47.80.090.

47.38.075 Electrical outlets for electric vehicles at rest areas—Battery exchange and charging station installation and operation. (1) By December 31, 2015, the state must, to the extent practicable, install electrical outlets capable of charging electric vehicles in each state-operated highway rest stop.

(2) By December 31, 2015, the state must provide the opportunity to lease space for the limited purpose of installing and operating a battery exchange station or a battery charging station in appropriate state-owned highway rest stops.

(3) The department of transportation's obligations under this section are subject to the availability of amounts appropriated for the specific purpose identified in this section, unless the department receives federal or private funds for the specific purpose identified in this section.

(4) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Battery charging station" means an electrical component assembly or cluster of component assemblies designed specifically to charge batteries within electric vehicles, which meet or exceed any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

(b) "Battery exchange station" means a fully automated facility that will enable an electric vehicle with a swappable battery to enter a drive lane and exchange the depleted battery with a fully charged battery through a fully automated process, which meets or exceeds any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540. [2009 c 459 § 15.]

Finding—Purpose—2009 c 459: See note following RCW 47.80.090.

Regional transportation planning organizations—Electric vehicle infrastructure: RCW 47.80.090.

Chapter 47.39 RCW

SCENIC AND RECREATIONAL HIGHWAY ACT OF 1967

Sections

47.39.020 Designation of portions of existing highways and ferry routes as part of system.

47.39.020 Designation of portions of existing highways and ferry routes as part of system. The following portions of highways are designated as part of the scenic and recreational highway system:

(1) State route number 2, beginning at the crossing of Woods creek at the east city limits of Monroe, thence in an easterly direction by way of Stevens pass to a junction with state route number 97 in the vicinity of Peshastin; also

Beginning at the junction with state route number 17, in the vicinity of Coulee City, thence easterly to the junction with state route number 155;

(2) State route number 3, beginning at a junction with state route number 101 in the vicinity of Shelton, thence northeasterly and northerly to a junction with state route number 104 in the vicinity of Port Gamble;

(3) State route number 4, beginning at the junction with state route number 101, thence easterly through Cathlamet to Coal Creek road, approximately .5 miles west of the Longview city limits;

(4) State route number 6, beginning at the junction with state route number 101 in Raymond, thence easterly to the junction with state route number 5, in the vicinity of Chehalis;

(5) State route number 7, beginning at the junction with state route number 12 in Morton, thence northerly to the junction with state route number 507;

(6) State route number 8, beginning at a junction with state route number 12 in the vicinity of Elma, thence easterly to a junction with state route number 101 near Tumwater;

(7) State route number 9, beginning at the junction with state route number 530 in Arlington, thence northerly to the end of the route at the Canadian border;

(8) State route number 10, beginning at Teanaway junction, thence easterly to a junction with state route number 97 west of Ellensburg;

(9) State route number 11, beginning at the junction with state route number 5 in the vicinity of Burlington, thence in a northerly direction to the junction with state route number 5;

(10) State route number 12, beginning at a junction with a county road approximately 2.8 miles west of the crossing of the Wynoochee river which is approximately 1.2 miles west of Montesano, thence in an easterly direction to a junction with state route number 8 in the vicinity of Elma; also

Beginning at a junction with state route number 5, thence easterly by way of Morton, Randle, and Packwood to the junction with state route number 410, approximately 3.5 miles west of Naches; also

Beginning at the junction with state route number 124 in the vicinity of the Tri-Cities, thence easterly through Wallula and Touchet to a junction with a county road approximately 2.4 miles west of a junction with state route number 129 at Clarkston;

(11) State route number 14, beginning at the crossing of Gibbons creek approximately 0.9 miles east of Washougal, thence easterly along the north bank of the Columbia river to a point in the vicinity of Plymouth;

(12) State route number 17, beginning at a junction with state route number 395 in the vicinity of Mesa, thence northerly to the junction with state route number 97 in the vicinity of Brewster;

(13) State route number 19, the Chimacum-Beaver Valley road, beginning at the junction with state route number 104, thence northerly to the junction with state route number 20;

(14) State route number 20, beginning at the junction with state route number 101 to the ferry zone in Port Townsend; also

Beginning at the Keystone ferry slip on Whidbey Island, thence northerly and easterly to a junction with state route number 153 southeast of Twisp; also

Beginning at the junction of state route number 97 in the vicinity of Okanogan, thence westerly across the Okanogan river to the junction with state route number 215; also

Beginning at a junction with state route number 97 near Tonasket, thence easterly and southerly to a junction with state route number 2 at Newport;

(15) State route number 25, beginning at the Spokane river bridge, thence northerly through Cedonia, Gifford, Kettle Falls, and Northport, to the Canadian border;

(16) State route number 26, beginning at the Whitman county boundary line, thence easterly by way of the vicinities of La Crosse and Dusty to a junction with state route number 195 in the vicinity of Colfax;

(17) State route number 27, beginning at a junction with state route number 195 in the vicinity of Pullman, thence northerly by way of the vicinities of Palouse and Garfield to a junction with state route number 271 in the vicinity of Oakesdale; also

From a junction with state route number 271 at Oakesdale, thence northerly to the vicinity of Tekoa;

(18) State route number 31, beginning at the junction with state route number 20 in Tiger, thence northerly to the Canadian border;

(19) State route number 82, beginning at the junction with state route number 395 south of the Tri-Cities area, thence southerly to the end of the route at the Oregon border;

(20) State route number 90, beginning at the junction with East Sunset Way in the vicinity east of Issaquah, thence easterly to Thorp road 9.0 miles west of Ellensburg;

(21) State route number 97, beginning at the Oregon border, in a northerly direction through Toppenish and Wapato to the junction with state route number 82 at Union Gap; also

Beginning at the junction with state route number 10, 2.5 miles north of Ellensburg, in a northerly direction to the junction with state route number 2, 4.0 miles east of Leavenworth; also

Beginning at the junction of state route number 153 in the vicinity south of Pateros, thence northerly by way of the vicinities of Brewster, Okanogan, Omak, Riverside, Tonasket, and Oroville to the international boundary line;

(22) State route number 97 alternate, beginning at the junction with state route number 2 in the vicinity of Monitor, thence northerly to the junction with state route number 97, approximately 5.0 miles north of Chelan;

(23) State route number 101, beginning at the Astoria-Megler bridge, thence north to Fowler street in Raymond; also

Beginning at a junction with state route number 109 in the vicinity of Queets, thence in a northerly, northeasterly, and easterly direction by way of Forks to the junction with state route number 5 in the vicinity of Olympia;

(24) State route number 104, beginning at a junction with state route number 101 in the vicinity south of Discovery bay, thence in a southeasterly direction to the Kingston ferry crossing;

(25) State route number 105, beginning at a junction with state route number 101 at Raymond, thence westerly and northerly by way of Tokeland and North Cove to the shore of Grays Harbor north of Westport; also

Beginning at a junction with state route number 105 in the vicinity south of Westport, thence northeasterly to a junction with state route number 101 at Aberdeen;

(26) State route number 109, beginning at a junction with state route number 101 in Hoquiam to a junction with state route number 101 in the vicinity of Queets;

(27) State route number 112, beginning at the easterly boundary of the Makah Indian reservation, thence in an easterly direction to the vicinity of Laird's corner on state route number 101;

(28) State route number 116, beginning at the junction with the Chimacum-Beaver Valley road, thence in an easterly direction to Fort Flagler State Park;

(29) State route number 119, beginning at the junction with state route number 101 at Hoodsport, thence northwesterly to the Mount Rose development intersection;

(30) State route number 122, Harmony road, between the junction with state route number 12 near Mayfield dam and the junction with state route number 12 in Mossyrock;

(31) State route number 123, beginning at the junction with state route number 12 in the vicinity of Morton, thence northerly to the junction with state route number 410;

(32) State route number 129, beginning at the Oregon border, thence northerly to the junction with state route number 12 in Clarkston;

(33) State route number 141, beginning at the junction with state route number 14 in Bingen, thence northerly to the end of the route at the Skamania county line;

(34) State route number 142, beginning at the junction with state route number 14 in Lyle, thence northeasterly to the junction with state route number 97, .5 miles from Goldendale;

(35) State route number 153, beginning at a junction with state route number 97 in the vicinity of Pateros, thence in a northerly direction to a junction with state route number 20 in the vicinity south of Twisp;

(36) State route number 155, beginning at a junction with state route number 2 in the vicinity north of Coulee City, thence northerly and westerly to the junction with state route number 215;

(37) State route number 194, beginning at the Port of Almota to the junction with state route number 195 in the vicinity of Pullman;

(38) State route number 195, beginning at the Washington-Idaho boundary line southeast of Uniontown, thence northwesterly and northerly by way of the vicinity of Colton, Pullman, Colfax, Steptoe, and Rosalia to the Whitman county boundary line;

(39) State route number 202, beginning at the junction with state route number 522, thence in an easterly direction to the junction with state route number 90 in the vicinity of North Bend;

(40) State route number 211, beginning at the junction with state route number 2, thence northerly to the junction with state route number 20 in the vicinity of Usk;

(41) State route number 215, beginning at the junction of state route number 20 in the vicinity of Okanogan, thence northeasterly on the west side of the Okanogan river to a junction with state route number 97 north of Omak;

(42) State route number 231, beginning at the junction with state route number 23, in the vicinity of Sprague, thence in a northerly direction to the junction with state route number 2, approximately 2.5 miles west of Reardan;

(43) State route number 261, beginning at the junction with state route number 12 in the vicinity of Delaney, thence northwesterly to the junction with state route number 260;

(44) State route number 262, beginning at the junction with state route number 26, thence northeasterly to the junc-

tion with state route number 17 between Moses Lake and Othello;

(45) State route number 271, beginning at a junction with state route number 27 in the vicinity of Oakesdale, thence northwesterly to a junction with state route number 195 in the vicinity south of Rosalia;

(46) State route number 272, beginning at the junction with state route number 195 in Colfax, thence easterly to the Idaho state line, approximately 1.5 miles east of Palouse;

(47) State route number 305, beginning at the Winslow ferry dock to the junction with state route number 3 approximately 1.0 mile north of Poulsbo;

(48) State route number 395, beginning at the north end of the crossing of Mill creek in the vicinity of Colville, thence in a northwesterly direction to a junction with state route number 20 at the west end of the crossing over the Columbia river at Kettle Falls;

(49) State route number 401, beginning at a junction with state route number 101 at Point Ellice, thence easterly and northerly to a junction with state route number 4 in the vicinity north of Naselle;

(50) State route number 410, beginning 4.0 miles east of Enumclaw, thence in an easterly direction to the junction with state route number 12, approximately 3.5 miles west of Naches;

(51) State route number 501, beginning at the junction with state route number 5 in the vicinity of Vancouver, thence northwesterly on the New Lower River road around Vancouver Lake;

(52) State route number 503, beginning at the junction with state route number 500, thence northerly by way of Battle Ground and Yale to the junction with state route number 5 in the vicinity of Woodland;

(53) State route number 504, beginning at a junction with state route number 5 at Castle Rock, to the end of the route on Johnston Ridge, approximately milepost 52;

(54) State route number 505, beginning at the junction with state route number 504, thence northwesterly by way of Toledo to the junction with state route number 5;

(55) State route number 508, beginning at the junction with state route number 5, thence in an easterly direction to the junction with state route number 7 in Morton;

(56) State route number 525, beginning at the ferry toll booth on Whidbey Island to a junction with state route number 20 east of the Keystone ferry slip;

(57) State route number 542, beginning at the junction with state route number 5, thence easterly to the vicinity of Austin pass in Whatcom county;

(58) State route number 547, beginning at the junction with state route number 542 in Kendall, thence northwesterly to the junction with state route number 9 in the vicinity of the Canadian border;

(59) State route number 706, beginning at the junction with state route number 7 in Elbe, in an easterly direction to the end of the route at Mt. Rainier National Park;

(60) State route number 821, beginning at a junction with state route number 82 at the Yakima firing center interchange, thence in a northerly direction to a junction with state route number 82 at the Thrall road interchange;

(61) State route number 971, Navarre Coulee road, between the junction with state route number 97 and the junction with South Lakeshore road;

(62) Beginning at the Anacortes ferry landing, the Washington state ferries Anacortes/San Juan Islands route, which includes stops at Lopez, Shaw, Orcas, and San Juan Islands; and the roads on San Juan and Orcas Islands as described in San Juan Island county council resolution number 7, adopted February 5, 2008;

(63) All Washington state ferry routes. [2009 c 277 § 1; 2003 c 55 § 1; 1993 c 430 § 7; 1992 c 26 § 2; 1991 c 342 § 54; 1990 c 240 § 3; 1975 c 63 § 8; 1973 1st ex.s. c 151 § 10; 1971 ex.s. c 73 § 29; 1970 ex.s. c 51 § 177; 1969 ex.s. c 281 § 6; 1967 ex.s. c 85 § 2.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

Legislative finding—1990 c 240: "The legislature finds that scenic and recreational highways are designated because of a need to develop management plans that will protect and preserve the scenic and recreational resources from loss through inappropriate development. Protection of scenic and recreational resources includes managing land use outside normal highway rights-of-way. The legislature recognizes that scenic and recreational highways are typically located in areas that are natural in character, along watercourses or through mountainous areas, or in areas with a view of such scenery." [1990 c 240 § 1.]

Chapter 47.56 RCW
STATE TOLL BRIDGES, TUNNELS, AND FERRIES

Sections

47.56.165 Tacoma Narrows toll bridge account.
47.56.850 Transportation commission as state tolling authority—Powers and duties—Toll rates—Restrictions on toll revenue.
47.56.855 Report to legislature on toll rate increases and decreases by transportation commission.
47.56.870 State route No. 520 corridor—Tolls authorized—Eligible toll facility—Toll revenue—Toll rate schedule—Bridge replacement.
47.56.875 State route No. 520 corridor account—Deposits—Use and transfer of funds.

47.56.165 Tacoma Narrows toll bridge account. A special account to be known as the Tacoma Narrows toll bridge account is created in the motor vehicle fund in the state treasury.

(1) Deposits to the account must include:

(a) All proceeds of bonds issued for construction of the Tacoma Narrows public-private initiative project, including any capitalized interest;

(b) All of the toll charges and other revenues received from the operation of the Tacoma Narrows bridge as a toll facility, to be deposited at least monthly;

(c) Any interest that may be earned from the deposit or investment of those revenues;

(d) Notwithstanding RCW 47.12.063, proceeds from the sale of any surplus real property acquired for the purpose of building the second Tacoma Narrows bridge; and

(e) All liquidated damages collected under any contract involving the construction of the second Tacoma Narrows bridge.

(2) Proceeds of bonds shall be used consistent with RCW 47.46.130, including the reimbursement of expenses and fees incurred under agreements entered into under RCW 47.46.040 as required by those agreements.

(3) Toll charges, other revenues, and interest may only be used to:

(a) Pay required costs that contribute directly to the financing, operation, maintenance, management, and necessary repairs of the tolled facility, as determined by rule by the transportation commission; and

(b) Repay amounts to the motor vehicle fund as required under RCW 47.46.140.

(4) Toll charges, other revenues, and interest may not be used to pay for costs that do not contribute directly to the financing, operation, maintenance, management, and necessary repairs of the tolled facility, as determined by rule by the transportation commission.

(5) The department shall make detailed quarterly expenditure reports available to the transportation commission and to the public on the department's web site using current department resources.

(6) When repaying the motor vehicle fund under RCW 47.46.140, the state treasurer shall transfer funds from the Tacoma Narrows toll bridge account to the motor vehicle fund on or before each debt service date for bonds issued for the Tacoma Narrows public-private initiative project in an amount sufficient to repay the motor vehicle fund for amounts transferred from that fund to the highway bond retirement fund to provide for any bond principal and interest due on that date. The state treasurer may establish subaccounts for the purpose of segregating toll charges, bond sale proceeds, and other revenues. [2009 c 567 § 1; 2006 c 17 § 1; 2002 c 114 § 11.]

Finding—Intent—2002 c 114: See RCW 47.46.011.

Captions not law—2002 c 114: See note following RCW 47.46.011.

47.56.850 Transportation commission as state tolling authority—Powers and duties—Toll rates—Restrictions on toll revenue. (1) Unless these powers are otherwise delegated by the legislature, the transportation commission is the tolling authority for the state. The tolling authority shall:

(a) Set toll rates, establish appropriate exemptions, if any, and make adjustments as conditions warrant on eligible toll facilities;

(b) Review toll collection policies, toll operations policies, and toll revenue expenditures on the eligible toll facilities and report annually on this review to the legislature.

(2) The tolling authority, in determining toll rates, shall consider the policy guidelines established in RCW 47.56.830.

(3) Unless otherwise directed by the legislature, in setting and periodically adjusting toll rates, the tolling authority must ensure that toll rates will generate revenue sufficient to:

(a) Meet the operating costs of the eligible toll facilities, including necessary maintenance, preservation, renewal, replacement, administration, and toll enforcement by public law enforcement;

(b) Meet obligations for the timely payment of debt service on bonds issued for eligible toll facilities, and any other associated financing costs including, but not limited to, required reserves, minimum debt coverage or other appropriate contingency funding, insurance, and compliance with all other financial and other covenants made by the state in the bond proceedings;

(c) Meet obligations to reimburse the motor vehicle fund for excise taxes on motor vehicle and special fuels applied to the payment of bonds issued for eligible toll facilities; and

(d) Meet any other obligations of the tolling authority to provide its proportionate share of funding contributions for any projects or operations of the eligible toll facilities.

(4) The established toll rates may include variable pricing, and should be set to optimize system performance, recognizing necessary trade-offs to generate revenue for the purposes specified in subsection (3) of this section. Tolls may vary for type of vehicle, time of day, traffic conditions, or other factors designed to improve performance of the system.

(5) In fixing and adjusting toll rates under this section, the only toll revenue to be taken into account must be toll revenue pledged to bonds that includes toll receipts, and the only debt service requirements to be taken into account must be debt service on bonds payable from and secured by toll revenue that includes toll receipts.

(6) The legislature pledges to appropriate toll revenue as necessary to carry out the purposes of this section. When the legislature has specifically identified and designated an eligible toll facility and authorized the issuance of bonds for the financing of the eligible toll facility that are payable from and secured by a pledge of toll revenue, the legislature further agrees for the benefit of the owners of outstanding bonds issued by the state for eligible toll facilities to continue in effect and not to impair or withdraw the authorization of the tolling authority to fix and adjust tolls as provided in this section. The state finance committee shall pledge the state's obligation to impose and maintain tolls, together with the application of toll revenue as described in this section, to the owners of any bonds. [2009 c 498 § 15; 2008 c 122 § 7.]

47.56.855 Report to legislature on toll rate increases and decreases by transportation commission. Prior to the convening of each regular session of the legislature, the transportation commission must provide the transportation committees of the legislature with a detailed report regarding any increase or decrease in any toll rate approved by the commission that has not been described in a previous report provided pursuant to this section, along with a detailed justification for each such increase or decrease. [2009 c 472 § 6.]

Intent—Effective date—2009 c 472: See notes following RCW 47.56.870.

47.56.870 State route No. 520 corridor—Tolls authorized—Eligible toll facility—Toll revenue—Toll rate schedule—Bridge replacement. (1) The initial imposition of tolls on the state route number 520 corridor is authorized, the state route number 520 corridor is designated an eligible toll facility, and toll revenue generated in the corridor must only be expended as allowed under RCW 47.56.820.

(2) The state route number 520 corridor consists of that portion of state route number 520 between the junctions of Interstate 5 and state route number 202. The toll imposed by this section shall be charged only for travel on the floating bridge portion of the state route number 520 corridor.

(3)(a) In setting the toll rates for the corridor pursuant to RCW 47.56.850, the tolling authority shall set a variable schedule of toll rates to maintain travel time, speed, and reli-

ability on the corridor and generate the necessary revenue as required under (b) of this subsection.

(b) The tolling authority shall initially set the variable schedule of toll rates, which the tolling authority may adjust at least annually to reflect inflation as measured by the consumer price index or as necessary to meet the redemption of bonds and interest payments on the bonds, to generate revenue sufficient to provide for:

(i) The issuance of general obligation bonds first payable from toll revenue and then excise taxes on motor vehicle and special fuels pledged for the payment of those bonds in the amount necessary to fund the replacement state route number 520 floating bridge and necessary landings, subject to subsection (4) of this section; and

(ii) Costs associated with the project designated in subsection (4) of this section that are eligible under RCW 47.56.820.

(4) The proceeds of the bonds designated in subsection (3)(b)(i) of this section, which together with other appropriated and identified state and federal funds is sufficient to pay for the replacement of the floating bridge segment and necessary landings of state route number 520, must be used only to fund the construction of the replacement state route number 520 floating bridge and necessary landings.

(5) The department may carry out the construction and improvements designated in subsection (4) of this section and administer the tolling program on the state route number 520 corridor. [2009 c 472 § 2.]

Intent—2009 c 472: "It is the intent of the legislature that the state authorize early tolling on the state route number 520 corridor in order to secure the authority to spend federal grant moneys provided to Washington state as part of the urban partnership grant program.

It is further the intent of the legislature to impose tolls on the state route number 520 floating bridge subject to section 2 of this act, to help finance construction of the replacement state route number 520 floating bridge and necessary landings.

It is further the intent of the legislature to expedite the replacement of the floating bridge and necessary landings in a manner that does not preclude local design options on either side of the state route number 520 corridor. For all projects in the state route number 520 corridor program, the legislature intends that the total cost will be no more than four billion six hundred fifty million dollars.

It is further the intent of the legislature that if the tolls on the state route number 520 corridor significantly alter the performance of nearby facilities, the legislature will reconsider the tolling policy for the corridor.

It is further the intent of the legislature that the department of transportation applies for federal stimulus funds for projects in the corridor." [2009 c 472 § 1.]

Effective date—2009 c 472: "This act takes effect August 1, 2009." [2009 c 472 § 7.]

47.56.875 State route No. 520 corridor account—Deposits—Use and transfer of funds. A special account to be known as the state route number 520 corridor account is created in the state treasury.

(1) Deposits to the account must include:

(a) All proceeds of bonds issued for construction of the replacement state route number 520 floating bridge and necessary landings, including any capitalized interest;

(b) All of the tolls and other revenues received from the operation of the state route number 520 corridor as a toll facility, to be deposited at least monthly;

(c) Any interest that may be earned from the deposit or investment of those revenues;

(d) Notwithstanding RCW 47.12.063, proceeds from the sale of any surplus real property acquired for the purpose of building the replacement state route number 520 floating bridge and necessary landings; and

(e) All damages, liquidated or otherwise, collected under any contract involving the construction of the replacement state route number 520 floating bridge and necessary landings.

(2) Subject to the covenants made by the state in the bond proceedings authorizing the issuance and sale of bonds for the replacement state route number 520 floating bridge and necessary landings, toll charges, other revenues, and interest received from the operation of the state route number 520 corridor as a toll facility may be used to:

(a) Pay any required costs allowed under RCW 47.56.820; and

(b) Repay amounts to the motor vehicle fund as required.

(3) When repaying the motor vehicle fund, the state treasurer shall transfer funds from the state route number 520 corridor account to the motor vehicle fund on or before each debt service date for bonds issued for the replacement state route number 520 floating bridge project and necessary landings in an amount sufficient to repay the motor vehicle fund for amounts transferred from that fund to the highway bond retirement fund to provide for any bond principal and interest due on that date. The state treasurer may establish subaccounts for the purpose of segregating toll charges, bond sale proceeds, and other revenues. [2009 c 472 § 4.]

Intent—Effective date—2009 c 472: See notes following RCW 47.56.870.

Chapter 47.60 RCW

PUGET SOUND FERRY AND TOLL BRIDGE SYSTEM

Sections

47.60.395 Evaluation of cost allocation methodology and preservation and improvement costs—Exception. *(Expires December 31, 2010.)*

47.60.645 Passenger ferry account.

47.60.395 Evaluation of cost allocation methodology and preservation and improvement costs—Exception. ***(Expires December 31, 2010.)*** (1) The joint legislative audit and review committee shall assess and report as follows:

(a) Audit the implementation of the cost allocation methodology evaluated under [section 205,] chapter 518, Laws of 2007, as it exists on July 22, 2007, assessing whether actual costs are allocated consistently with the methodology, whether there are sufficient internal controls to ensure proper allocation, and the adequacy of staff training; and

(b) Review the assignment of preservation costs and improvement costs for fiscal year 2009 to determine whether:

(i) The costs are capital costs;

(ii) The costs meet the statutory requirements for preservation activities and for improvement activities; and

(iii) Improvement costs are within the scope of legislative appropriations.

(2) The report on the evaluations in this section is due by January 31, 2010.

(3) This section expires December 31, 2010.

(4) The requirements of this section shall not apply during the 2009-2011 fiscal biennium. [2009 c 470 § 707; 2007 c 512 § 15.]

Effective date—2009 c 470: See note following RCW 46.68.170.

Finding—Intent—2007 c 512: See note following RCW 47.06.140.

47.60.645 Passenger ferry account. There is hereby established in the transportation fund the passenger ferry account. Money in the account shall be used for operating or capital grants for ferry systems as provided in chapters 36.54, 36.57A, and 53.08 RCW. Moneys in the account shall be expended with legislative appropriation. During the 2007-2009 fiscal biennium, the legislature may transfer from the passenger ferry account such amounts as reflect the excess fund balance of the account. [2009 c 8 § 504; 2008 c 45 § 2; 2006 c 332 § 1; 1995 2nd sp.s. c 14 § 558.]

Effective date—2009 c 8: See note following RCW 46.68.065.

Effective dates—1995 2nd sp.s. c 14: See note following RCW 43.105.017.

Severability—1995 2nd sp.s. c 14: See note following RCW 43.105.017.

Chapter 47.68 RCW
AERONAUTICS

Sections

47.68.090 Aid to municipalities, Indian tribes—Federal aid.

47.68.090 Aid to municipalities, Indian tribes—Federal aid. The department of transportation may make available its engineering and other technical services, with or without charge, to any municipality or person desiring them in connection with the planning, acquisition, construction, improvement, maintenance or operation of airports or air navigation facilities.

The department may render financial assistance by grant or loan or both to any municipality or municipalities acting jointly in the planning, acquisition, construction, improvement, maintenance, or operation of an airport owned or controlled, or to be owned or controlled by such municipality or municipalities, or to any Indian tribe recognized as such by the federal government or such tribes acting jointly in the planning, acquisition, construction, improvement, maintenance or operation of an airport, owned or controlled, or to be owned or controlled by such tribe or tribes and to be held available for the general use of the public, out of appropriations made by the legislature for such purposes. Such financial assistance may be furnished in connection with federal or other financial aid for the same purposes: PROVIDED, That no grant or loan or both shall be in excess of two hundred fifty thousand dollars, or five hundred thousand dollars during the 2009-2011 fiscal biennium, for any one project: PROVIDED FURTHER, That no grant or loan or both shall be granted unless the municipality or municipalities acting jointly, or the tribe or tribes acting jointly shall from their own funds match any funds made available by the department upon such ratio as the department may prescribe.

The department is authorized to act as agent of any municipality or municipalities acting jointly or any tribe or tribes acting jointly, upon the request of such municipality or municipalities, or such tribe or tribes in accepting, receiving, receipting for and disbursing federal moneys, and other moneys public or private, made available to finance, in whole or in part, the planning, acquisition, construction, improvement, maintenance or operation of an airport or air navigation facility; and if requested by such municipality or municipalities, or tribe or tribes, may act as its or their agent in contracting for and supervising such planning, acquisition, construction, improvement, maintenance, or operation; and all municipalities and tribes are authorized to designate the department as their agent for the foregoing purposes. The department, as principal on behalf of the state, and any municipality on its own behalf, may enter into any contracts, with each other or with the United States or with any person, which may be required in connection with a grant or loan of federal moneys for airport or air navigation facility purposes. All federal moneys accepted under this section shall be accepted and transferred or expended by the department upon such terms and conditions as are prescribed by the United States. All moneys received by the department pursuant to this section shall be deposited in the state treasury, and, unless otherwise prescribed by the authority from which such moneys were received, shall be kept in separate funds designated according to the purposes for which the moneys were made available, and held by the state in trust for such purposes. All such moneys are hereby appropriated for the purposes for which the same were made available, to be disbursed or expended in accordance with the terms and conditions upon which they were made available: PROVIDED, That any landing fee or charge imposed by any Indian tribe or tribes for the privilege of use of an airport facility planned, acquired, constructed, improved, maintained, or operated with financial assistance from the department pursuant to this section must apply equally to tribal and nontribal members: PROVIDED FURTHER, That in the event any municipality or municipalities or Indian tribe or tribes, or any distributor of aircraft fuel as defined by RCW 82.42.020 which operates in any airport facility which has received financial assistance pursuant to this section, fails to collect the aircraft fuel excise tax as specified in chapter 82.42 RCW, all funds or value of technical assistance given or paid to such municipality or municipalities or Indian tribe or tribes under the provisions of this section shall revert to the department, and shall be due and payable to the department immediately. [2009 c 470 § 718; 1980 c 67 § 1; 1975 1st ex.s. c 161 § 1; 1947 c 165 § 9; Rem. Supp. 1947 § 10964-89. Formerly RCW 14.04.090.]

Effective date—2009 c 470: See note following RCW 46.68.170.

Distributor of aircraft fuel defined: RCW 82.42.010(7).

Chapter 47.76 RCW
RAIL FREIGHT SERVICE

Sections

47.76.250 Essential rail assistance account—Purposes.

47.76.250 Essential rail assistance account—Purposes. (1) The essential rail assistance account is created in the state treasury. Moneys in the account may be appropriated only for the purposes specified in this section.

(2) Moneys appropriated from the account to the department of transportation may be used by the department or distributed by the department to cities, county rail districts, counties, economic development councils, port districts, and privately or publicly owned railroads for the purpose of:

(a) Acquiring, rebuilding, rehabilitating, or improving rail lines;

(b) Purchasing or rehabilitating railroad equipment necessary to maintain essential rail service;

(c) Constructing railroad improvements to mitigate port access or mainline congestion;

(d) Construction of loading facilities to increase business on light density lines or to mitigate the impacts of abandonment;

(e) Preservation, including operation, of light density lines, as identified by the Washington state department of transportation, in compliance with this chapter; or

(f) Preserving rail corridors for future rail purposes by purchase of rights-of-way. The department shall first pursue transportation enhancement program funds, available under the federal surface transportation program, to the greatest extent practicable to preserve rail corridors. Purchase of rights-of-way may include track, bridges, and associated elements, and must meet the following criteria:

(i) The right-of-way has been identified and evaluated in the state rail plan prepared under this chapter;

(ii) The right-of-way may be or has been abandoned; and

(iii) The right-of-way has potential for future rail service.

(3) The department or the participating local jurisdiction is responsible for maintaining any right-of-way acquired under this chapter, including provisions for drainage management, fire and weed control, and liability associated with ownership.

(4) Nothing in this section impairs the reversionary rights of abutting landowners, if any, without just compensation.

(5) The department, cities, county rail districts, counties, and port districts may grant franchises to private railroads for the right to operate on lines acquired under this chapter.

(6) The department, cities, county rail districts, counties, and port districts may grant trackage rights over rail lines acquired under this chapter.

(7) If rail lines or rail rights-of-way are used by county rail districts, port districts, state agencies, or other public agencies for the purposes of rail operations and are later abandoned, the rail lines or rail rights-of-way cannot be used for any other purposes without the consent of the underlying fee title holder or reversionary rights holder, or until compensation has been made to the underlying fee title holder or reversionary rights holder.

(8) The department of transportation shall develop criteria for prioritizing freight rail projects that meet the minimum eligibility requirements for state assistance under RCW 47.76.240. The department shall develop criteria in consultation with the Washington state freight rail policy advisory committee. Project criteria should consider the level of local financial commitment to the project as well as cost/benefit ratio. Counties, local communities, railroads, shippers, and others who benefit from the project should participate financially to the greatest extent practicable.

(9) Moneys received by the department from franchise fees, trackage rights fees, and loan payments shall be redeposited in the essential rail assistance account. Repayment of loans made under this section shall occur within a period not longer than fifteen years, as set by the department. The repayment schedule and rate of interest, if any, shall be determined before the distribution of the moneys.

(10) The state shall maintain a contingent interest in any equipment, property, rail line, or facility that has outstanding grants or loans. The owner may not use the line as collateral, remove track, bridges, or associated elements for salvage, or use it in any other manner subordinating the state's interest without permission from the department.

(11) Moneys may be granted for improvements to privately owned railroads, railroad property, or other private property under this chapter for freight rail projects that meet the minimum eligibility criteria for state assistance under RCW 47.76.240, and which are supported by contractual consideration. At a minimum, such contractual consideration shall consist of defined benefits to the public with a value equal to or greater than the grant amount, and where the grant recipient provides the state a contingent interest adequate to ensure that such public benefits are realized. [2009 c 160 § 1; 1996 c 73 § 2; 1995 c 380 § 6; 1993 c 224 § 4; 1991 sp.s. c 13 § 22; 1991 c 363 § 125; 1990 c 43 § 11. Prior: 1985 c 432 § 2; 1985 c 57 § 64; 1983 c 303 § 6. Formerly RCW 47.76.030.]

Effective date—1996 c 73: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 13, 1996]." [1996 c 73 § 4.]

Effective dates—Severability—1991 sp.s. c 13: See notes following RCW 18.08.240.

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

Construction—Severability—Headings—1990 c 43: See notes following RCW 81.100.010.

Effective date—1985 c 57: See note following RCW 18.04.105.

Severability—1983 c 303: See RCW 36.60.905.

County rail districts: Chapter 36.60 RCW.

Port districts, acquisition and operation of facilities: RCW 53.08.020.

Chapter 47.80 RCW
REGIONAL TRANSPORTATION PLANNING ORGANIZATIONS

Sections

47.80.023 Duties.
47.80.090 Regional transportation planning organizations—Electric vehicle infrastructure.

47.80.023 Duties. Each regional transportation planning organization shall have the following duties:

(1) Prepare and periodically update a transportation strategy for the region. The strategy shall address alternative transportation modes and transportation demand management measures in regional corridors and shall recommend preferred transportation policies to implement adopted growth strategies. The strategy shall serve as a guide in preparation of the regional transportation plan.

(2) Prepare a regional transportation plan as set forth in RCW 47.80.030 that is consistent with countywide planning

policies if such have been adopted pursuant to chapter 36.70A RCW, with county, city, and town comprehensive plans, and state transportation plans.

(3) Certify by December 31, 1996, that the transportation elements of comprehensive plans adopted by counties, cities, and towns within the region reflect the guidelines and principles developed pursuant to RCW 47.80.026, are consistent with the adopted regional transportation plan, and, where appropriate, conform with the requirements of RCW 36.70A.070.

(4) Where appropriate, certify that countywide planning policies adopted under RCW 36.70A.210 and the adopted regional transportation plan are consistent.

(5) Develop, in cooperation with the department of transportation, operators of public transportation services and local governments within the region, a six-year regional transportation improvement program which proposes regionally significant transportation projects and programs and transportation demand management measures. The regional transportation improvement program shall be based on the programs, projects, and transportation demand management measures of regional significance as identified by transit agencies, cities, and counties pursuant to RCW 35.58.2795, 35.77.010, and 36.81.121, respectively, and any recommended programs or projects identified by the agency council on coordinated transportation, as provided in chapter 47.06B RCW, that advance special needs coordinated transportation as defined in RCW 47.06B.012. The program shall include a priority list of projects and programs, project segments and programs, transportation demand management measures, and a specific financial plan that demonstrates how the transportation improvement program can be funded. The program shall be updated at least every two years for the ensuing six-year period.

(6) Include specific opportunities and projects to advance special needs coordinated transportation, as defined in RCW 47.06B.012, in the coordinated transit-human services transportation plan, after providing opportunity for public comment.

(7) Designate a lead planning agency to coordinate preparation of the regional transportation plan and carry out the other responsibilities of the organization. The lead planning agency may be a regional organization, a component county, city, or town agency, or the appropriate Washington state department of transportation district office.

(8) Review level of service methodologies used by cities and counties planning under chapter 36.70A RCW to promote a consistent regional evaluation of transportation facilities and corridors.

(9) Work with cities, counties, transit agencies, the department of transportation, and others to develop level of service standards or alternative transportation performance measures.

(10) Submit to the agency council on coordinated transportation, as provided in chapter 47.06B RCW, beginning on July 1, 2007, and every four years thereafter, an updated plan that includes the elements identified by the council. Each regional transportation planning organization must submit to the council every two years a prioritized regional human service and transportation project list. [2009 c 515 § 15; 2007 c 421 § 5; 1998 c 171 § 8; 1994 c 158 § 2.]

47.80.090 Regional transportation planning organizations—Electric vehicle infrastructure. (1) A regional transportation planning organization containing any county with a population in excess of one million in collaboration with representatives from the department of ecology, the department of community, trade, and economic development, local governments, and the office of regulatory assistance must seek federal or private funding for the planning for, deployment of, or regulations concerning electric vehicle infrastructure. These efforts should include:

(a) Development of short-term and long-term plans outlining how state, regional, and local government construction may include electric vehicle infrastructure in publicly available off-street parking and government fleet vehicle parking, including what ratios of charge spots to parking may be appropriate based on location or type of facility or building;

(b) Consultations with the state building code council and the department of labor and industries to coordinate the plans with state standards for new residential, commercial, and industrial buildings to ensure that the appropriate electric circuitry is installed to support electric vehicle infrastructure;

(c) Consultation with the workforce development council and the higher education coordinating board to ensure the development of appropriate educational and training opportunities for citizens of the state in support of the transition of some portion of vehicular transportation from combustion to electric vehicles;

(d) Development of an implementation plan for counties with a population greater than five hundred thousand with the goal of having public and private parking spaces, in the aggregate, be ten percent electric vehicle ready by December 31, 2018; and

(e) Development of model ordinances and guidance for local governments for siting and installing electric vehicle infrastructure, in particular battery charging stations, and appropriate handling, recycling, and storage of electric vehicle batteries and equipment.

(2) These plans and any recommendations developed as a result of the consultations required by this section must be submitted to the legislature by December 31, 2010, or as soon as reasonably practicable after the securing of any federal or private funding. Priority will be given to the activities in subsection (1)(e) of this section and any ordinances or guidance that is developed will be submitted to the legislature, the department of community, trade, and economic development, and affected local governments prior to December 31, 2010, if completed.

(3) The definitions in this subsection apply through [throughout] this section unless the context clearly requires otherwise.

(a) "Battery charging station" means an electrical component assembly or cluster of component assemblies designed specifically to charge batteries within electric vehicles, which meet or exceed any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

(b) "Battery exchange station" means a fully automated facility that will enable an electric vehicle with a swappable battery to enter a drive lane and exchange the depleted battery with a fully charged battery through a fully automated process, which meets or exceeds any standards, codes, and regu-

lations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

(c) "Electric vehicle infrastructure" means structures, machinery, and equipment necessary and integral to support an electric vehicle, including battery charging stations, rapid charging stations, and battery exchange stations.

(d) "Rapid charging station" means an industrial grade electrical outlet that allows for faster recharging of electric vehicle batteries through higher power levels, which meets or exceeds any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540. [2009 c 459 § 2.]

Finding—Purpose—2009 c 459: "The legislature finds the development of electric vehicle infrastructure to be a critical step in creating jobs, fostering economic growth, reducing greenhouse gas emissions, reducing our reliance on foreign fuels, and reducing the pollution of Puget Sound attributable to the operation of petroleum-based vehicles on streets and highways. Limited driving distance between battery charges is a fundamental disadvantage and obstacle to broad consumer adoption of vehicles powered by electricity. In order to eliminate this fundamental disadvantage and dramatically increase consumer acceptance and usage of electric vehicles, it is essential that an infrastructure of convenient electric vehicle charging opportunities be developed. The purpose of this act is to encourage the transition to electric vehicle use and to expedite the establishment of a convenient, cost-effective, electric vehicle infrastructure that such a transition necessitates. The state's success in encouraging this transition will serve as an economic stimulus to the creation of short-term and long-term jobs as the entire automobile industry and its associated direct and indirect jobs transform over time from combustion to electric vehicles." [2009 c 459 § 1.]

Title 48

INSURANCE

Chapters

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Chapter 48.01 RCW
INITIAL PROVISIONS

Sections

48.01.050 "Insurer" defined. *(Effective January 1, 2010.)*

48.01.050 "Insurer" defined. ***(Effective January 1, 2010.)*** "Insurer" as used in this code includes every person engaged in the business of making contracts of insurance, other than a fraternal benefit society. A reciprocal or interinsurance exchange is an "insurer" as used in this code. Two or more hospitals that join and organize as a mutual corporation pursuant to chapter 24.06 RCW for the purpose of insuring or self-insuring against liability claims, including medical liability, through a contributing trust fund are not an "insurer" under this code. Two or more local governmental entities, under any provision of law, that join together and organize to form an organization for the purpose of jointly self-insuring or self-funding are not an "insurer" under this code. Two or more affordable housing entities that join together and organize to form an organization for the purpose of jointly self-insuring or self-funding under chapter 48.64 RCW are not an "insurer" under this code. Two or more persons engaged in the business of commercial fishing who enter into an arrangement with other such persons for the pooling of funds to pay claims or losses arising out of loss or damage to a vessel or machinery used in the business of commercial fishing and owned by a member of the pool are not an "insurer" under this code. [2009 c 314 § 19; 2003 c 248 § 1; 1990 c 130 § 1; 1985 c 277 § 9; 1979 ex.s. c 256 § 13; 1975-'76 2nd ex.s. c 13 § 1; 1947 c 79 § .01.05; Rem. Supp. 1947 § 45.01.05.]

Effective date—2009 c 314: See RCW 48.64.900.

Retrospective application—1985 c 277: "This act applies retrospectively to group self-funded plans formed on or after January 1, 1983." [1985 c 277 § 10.]

"Domestic," "foreign," "alien" insurers defined: RCW 48.05.010.

Merger, rehabilitation, liquidation situations—"Insurer" defined: RCW 48.31.020, 48.99.010.

"Reciprocal insurance, insurer" defined: RCW 48.10.010, 48.10.020.

Chapter 48.02 RCW
INSURANCE COMMISSIONER

Sections

48.02.010 Insurance commissioner.
48.02.020 Term of office.
48.02.030 Bond.
48.02.060 General powers and duties—State of emergency.
48.02.080 Enforcement.
48.02.090 Deputies—Employees.
48.02.100 Commissioner may delegate authority.
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48.02.130 Certificates—Copies—Evidentiary effect.
48.02.140 Interstate cooperation.
48.02.150 Supplies—"Convention blanks."
48.02.170 Annual report.
48.02.190 Operating costs of office—Insurance commissioner's regulatory account—Regulatory surcharge.

48.02.010 Insurance commissioner. (1) There shall be an insurance commissioner of this state who shall be elected at the time and in the manner that other state officers are elected.

(2) The commissioner in office at the effective date of this code shall continue in office for the remainder of the term for which he or she was elected and until his or her successor is duly elected and qualified.

(3) "Commissioner," where used in this code, means the insurance commissioner of this state. [2009 c 549 § 7001; 1947 c 79 § .02.01; Rem. Supp. 1947 § 45.02.01.]

48.02.020 Term of office. The term of office of the commissioner shall be four years, commencing on the Wednesday after the second Monday in January after his or her election. [2009 c 549 § 7002; 1947 c 79 § .02.02; Rem. Supp. 1947 § 45.02.02.]

48.02.030 Bond. Before entering upon his or her duties the commissioner shall execute a bond to the state in the sum of twenty-five thousand dollars, to be approved by the state treasurer and the attorney general, conditioned upon the faithful performance of the duties of his or her office. [2009 c 549 § 7003; 1947 c 79 § .02.03; Rem. Supp. 1947 § 45.02.03.]

48.02.060 General powers and duties—State of emergency. (1) The commissioner has the authority expressly conferred upon him or her by or reasonably implied from the provisions of this code.

(2) The commissioner shall execute his or her duties and shall enforce the provisions of this code.

(3) The commissioner may:

(a) Make reasonable rules for effectuating any provision of this code, except those relating to his or her election, qualifications, or compensation. Rules are not effective prior to their being filed for public inspection in the commissioner's office.

(b) Conduct investigations to determine whether any person has violated any provision of this code.

(c) Conduct examinations, investigations, hearings, in addition to those specifically provided for, useful and proper for the efficient administration of any provision of this code.

(4) When the governor proclaims a state of emergency under RCW 43.06.010(12), the commissioner may issue an order that addresses any or all of the following matters related to insurance policies issued in this state:

(a) Reporting requirements for claims;

(b) Grace periods for payment of insurance premiums and performance of other duties by insureds;

(c) Temporary postponement of cancellations and renewals; and

(d) Medical coverage to ensure access to care.

(5) An order by the commissioner under subsection (4) of this section may remain effective for not more than sixty days unless the commissioner extends the termination date for the order for an additional period of not more than thirty days. The commissioner may extend the order if, in the commissioner's judgment, the circumstances warrant an extension. An order of the commissioner under subsection (4) of this section is not effective after the related state of emergency is terminated by proclamation of the governor under RCW 43.06.210. The order must specify, by line of insurance:

(a) The geographic areas in which the order applies, which must be within but may be less extensive than the geographic area specified in the governor's proclamation of a state of emergency and must be specific according to an appropriate means of delineation, such as the United States postal service zip codes or other appropriate means; and

(b) The date on which the order becomes effective and the date on which the order terminates.

(6) The commissioner may adopt rules that establish general criteria for orders issued under subsection (4) of this section and may adopt emergency rules applicable to a specific proclamation of a state of emergency by the governor.

(7) The rule-making authority set forth in subsection (6) of this section does not limit or affect the rule-making authority otherwise granted to the commissioner by law. [2009 c 335 § 1; 1947 c 79 § .02.06; Rem. Supp. 1947 § 45.02.06.]

48.02.080 Enforcement. (1) The commissioner may prosecute an action in any court of competent jurisdiction to enforce any order made by him or her pursuant to any provision of this code.

(2) If the commissioner has cause to believe that any person has violated any penal provision of this code or of other laws relating to insurance he or she shall certify the facts of the violation to the public prosecutor of the jurisdiction in which the offense was committed.

(3) If the commissioner has cause to believe that any person is violating or is about to violate any provision of this code or any regulation or order of the commissioner, he or she may:

(a) issue a cease and desist order; and/or

(b) bring an action in any court of competent jurisdiction to enjoin the person from continuing the violation or doing any action in furtherance thereof.

(4) The attorney general and the several prosecuting attorneys throughout the state shall prosecute or defend all proceedings brought pursuant to the provisions of this code

when requested by the commissioner. [2009 c 549 § 7005; 1967 c 150 § 1; 1947 c 79 § .02.08; Rem. Supp. 1947 § 45.02.08.]

48.02.090 Deputies—Employees. (1) The commissioner may appoint a chief deputy commissioner, who shall have power to perform any act or duty conferred upon the commissioner. The chief deputy commissioner shall take and subscribe the same oath of office as the commissioner, which oath shall be endorsed upon the certificate of his or her appointment and filed in the office of the secretary of state.

(2) The commissioner may appoint additional deputy commissioners for such purposes as he or she may designate.

(3) The commissioner shall be responsible for the official acts of his or her deputies, and may revoke at will the appointment of any deputy.

(4) The commissioner may employ examiners, and such actuarial, technical, and administrative assistants and clerks as he or she may need for proper discharge of his or her duties.

(5) The commissioner, or any deputy or employee of the commissioner, shall not be interested, directly or indirectly, in any insurer except as a policyholder; except, that as to such matters wherein a conflict of interests does not exist on the part of any such person, the commissioner may employ insurance actuaries or other technicians who are independently practicing their professions even though such persons are similarly employed by insurers.

(6) The commissioner may require any deputy or employee to be bonded as he or she shall deem proper but not to exceed in amount the sum of twenty-five thousand dollars. The cost of any such bond shall be borne by the state. [2009 c 549 § 7006; 1949 c 190 § 1; 1947 c 79 § .02.09; Rem. Supp. 1949 § 45.02.09.]

48.02.100 Commissioner may delegate authority. Any power or duty vested in the commissioner by any provision of this code may be exercised or discharged by any deputy, assistant, examiner, or employee of the commissioner acting in his or her name and by his or her authority. [2009 c 549 § 7007; 1947 c 79 § .02.10; Rem. Supp. 1947 § 45.02.10.]

48.02.110 Office. The commissioner shall have an office at the state capital, and may maintain such offices elsewhere in this state as he or she may deem necessary. [2009 c 549 § 7008; 1947 c 79 § .02.11; Rem. Supp. 1947 § 45.02.11.]

48.02.130 Certificates—Copies—Evidentiary effect. (1) Any certificate or license issued by the commissioner shall bear the seal of his or her office.

(2) Copies of records or documents in his or her office certified to by the commissioner shall be received as evidence in all courts in the same manner and to the same effect as if they were the originals.

(3) When required for evidence in court, the commissioner shall furnish his or her certificate as to the authority of an insurer or other licensee in this state on any particular date, and the court shall receive the certificate in lieu of the commissioner's testimony. [2009 c 549 § 7009; 1947 c 79 § .02.13; Rem. Supp. 1947 § 45.02.13.]

48.02.140 Interstate cooperation. (1) The commissioner shall to the extent he or she deems useful for the proper discharge of his or her responsibilities under the provisions of this code:

(a) Consult and cooperate with the public officials having supervision over insurance in other states.

(b) Share jointly with other states in the employment of actuaries, statisticians, and other insurance technicians whose services or the products thereof are made available and are useful to the participating states and to the commissioner.

(c) Share jointly with other states in establishing and maintaining offices and clerical facilities for purposes useful to the participating states and to the commissioner.

(2) All arrangements made jointly with other states under items (b) and (c) of subsection (1) of this section shall be in writing executed on behalf of this state by the commissioner. Any such arrangement, as to participation of this state therein, shall be subject to termination by the commissioner at any time upon reasonable notice.

(3) For the purposes of this code "National Association of Insurance Commissioners" means that voluntary organization of the public officials having supervision of insurance in the respective states, districts, and territories of the United States, whatever other name such organization may hereafter adopt, and in the affairs of which each of such public officials is entitled to participate subject to the constitution and bylaws of such organization. [2009 c 549 § 7010; 1947 c 79 § .02.14; Rem. Supp. 1947 § 45.02.14.]

48.02.150 Supplies—"Convention blanks." The commissioner shall purchase at the expense of the state and in the manner provided by law:

(1) Printing, books, reports, furniture, equipment, and supplies as he or she deems necessary to the proper discharge of his or her duties under this code.

(2) "Convention form" insurers' annual statement blanks, which he or she may purchase from any printer manufacturing the forms for the various states. [2009 c 549 § 7011; 1947 c 79 § .02.15; Rem. Supp. 1947 § 45.02.15.]

48.02.170 Annual report. The commissioner shall, as soon as accurate preparation enables, prepare a report of his or her official transactions during the preceding fiscal year, containing information relative to insurance as the commissioner deems proper. [2009 c 549 § 7012; 1987 c 505 § 53; 1977 c 75 § 69; 1947 c 79 § .02.17; Rem. Supp. 1947 § 45.02.17.]

48.02.190 Operating costs of office—Insurance commissioner's regulatory account—Regulatory surcharge. (1) As used in this section:

(a) "Organization" means every insurer, as defined in RCW 48.01.050, having a certificate of authority to do business in this state, every health care service contractor, as defined in RCW 48.44.010, every health maintenance organization, as defined in RCW 48.46.020, or self-funded multiple employer welfare arrangement, as defined in RCW

48.125.010, registered to do business in this state. "Class one" organizations shall consist of all insurers as defined in RCW 48.01.050. "Class two" organizations shall consist of all organizations registered under provisions of chapters 48.44 and 48.46 RCW. "Class three" organizations shall consist of self-funded multiple employer welfare arrangements as defined in RCW 48.125.010.

(b)(i) "Receipts" means (A) net direct premiums consisting of direct gross premiums, as defined in RCW 48.18.170, paid for insurance written or renewed upon risks or property resident, situated, or to be performed in this state, less return premiums and premiums on policies not taken, dividends paid or credited to policyholders on direct business, and premiums received from policies or contracts issued in connection with qualified plans as defined in RCW 48.14.021, and (B) prepayments to health care service contractors, as defined in RCW 48.44.010, health maintenance organizations, as defined in RCW 48.46.020, or participant contributions to self-funded multiple employer welfare arrangements, as defined in RCW 48.125.010, less experience rating credits, dividends, prepayments returned to subscribers, and payments for contracts not taken.

(ii) Participant contributions, under chapter 48.125 RCW, used to determine the receipts in this state under this section shall be determined in the same manner as premiums taxable in this state are determined under RCW 48.14.090.

(c) "Regulatory surcharge" means the fees imposed by this section.

(2) The annual cost of operating the office of insurance commissioner shall be determined by legislative appropriation. A pro rata share of the cost shall be charged to all organizations as a regulatory surcharge. Each class of organization shall contribute a sufficient amount to the insurance commissioner's regulatory account to pay the reasonable costs, including overhead, of regulating that class of organization.

(3) The regulatory surcharge shall be calculated separately for each class of organization. The regulatory surcharge collected from each organization shall be that portion of the cost of operating the insurance commissioner's office, for that class of organization, for the ensuing fiscal year that is represented by the organization's portion of the receipts collected or received by all organizations within that class on business in this state during the previous calendar year. However, the regulatory surcharge must not exceed one-eighth of one percent of receipts and the minimum regulatory surcharge shall be one thousand dollars.

(4) The commissioner shall annually, on or before June 1st, calculate and bill each organization for the amount of the regulatory surcharge. The regulatory surcharge shall be due and payable no later than June 15th of each year. However, if the necessary financial records are not available or if the amount of the legislative appropriation is not determined in time to carry out such calculations and bill such regulatory surcharge within the time specified, the commissioner may use the regulatory surcharge factors for the prior year as the basis for the regulatory surcharge and, if necessary, the commissioner may impose supplemental fees to fully and properly charge the organizations. Any organization failing to pay the regulatory surcharges by June 30th shall pay the same penalties as the penalties for failure to pay taxes when due under RCW 48.14.060. The regulatory surcharge required by this section is in addition to all other taxes and fees now imposed or that may be subsequently imposed.

(5) All moneys collected shall be deposited in the insurance commissioner's regulatory account in the state treasury which is hereby created.

(6) Unexpended funds in the insurance commissioner's regulatory account at the close of a fiscal year shall be carried forward in the insurance commissioner's regulatory account to the succeeding fiscal year and shall be used to reduce future regulatory surcharges.

(7)(a) Each insurer may annually collect regulatory surcharges remitted in preceding years by means of a policyholder surcharge on premiums charged for all kinds of insurance. The recoupment shall be at a uniform rate reasonably calculated to collect the regulatory surcharge remitted by the insurer.

(b) If an insurer fails to collect the entire amount of the recoupment in the first year under this section, it may repeat the recoupment procedure provided for in this subsection (7) in succeeding years until the regulatory surcharge is fully collected or a de minimis amount remains uncollected. Any such de minimis amount may be collected as provided in (d) of this subsection.

(c) The amount and nature of any recoupment shall be separately stated on either a billing or policy declaration sent to an insured. The amount of the recoupment must not be considered a premium for any purpose, including the premium tax or agents' commissions.

(d) An insurer may elect not to collect the regulatory surcharge from its insured. In such a case, the insurer may recoup the regulatory surcharge through its rates, if the following requirements are met:

(i) The insurer remits the amount of surcharge not collected by election under this subsection; and

(ii) The surcharge is not considered a premium for any purpose, including the premium tax or agents' commission. [2009 c 161 § 1; 2008 c 328 § 6003. Prior: 2007 c 468 § 1; 2007 c 153 § 3; 2004 c 260 § 22; 2003 1st sp.s. c 25 § 923; 2002 c 371 § 913; 1987 c 505 § 54; 1986 c 296 § 7.]

Part headings not law—Severability—Effective date—2008 c 328: See notes following RCW 43.155.050.

Severability—Effective date—2004 c 260: See RCW 48.125.900 and 48.125.901.

Severability—Effective date—2003 1st sp.s. c 25: See notes following RCW 19.28.351.

Severability—Effective date—2002 c 371: See notes following RCW 9.46.100.

Severability—Effective date—1986 c 296: See notes following RCW 48.14.020.

Chapter 48.03 RCW
EXAMINATIONS

Sections

48.03.020 Examination of producers, surplus line brokers, adjusters, title insurance agents, managers, or promoters.
48.03.030 Access to records on examination—Correction of accounts.

48.03.020 Examination of producers, surplus line brokers, adjusters, title insurance agents, managers, or

promoters. For the purpose of ascertaining its condition, or compliance with this code, the commissioner may as often as he or she deems advisable examine the accounts, records, documents, and transactions of:

(1) Any insurance producer, surplus line broker, adjuster, or title insurance agent.

(2) Any person having a contract under which he or she enjoys in fact the exclusive or dominant right to manage or control a stock or mutual insurer.

(3) Any person holding the shares of capital stock or policyholder proxies of a domestic insurer for the purpose of control of its management either as voting trustee or otherwise.

(4) Any person engaged in or proposing to be engaged in or assisting in the promotion or formation of a domestic insurer, or an insurance holding corporation, or a stock corporation to finance a domestic mutual insurer or the production of its business, or a corporation to be attorney-in-fact for a domestic reciprocal insurer. [2009 c 162 § 1; 2008 c 217 § 1; 1947 c 79 § .03.02; Rem. Supp. 1947 § 45.03.02.]

Effective date—2009 c 162: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2009." [2009 c 162 § 36.]

Severability—2008 c 217: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2008 c 217 § 101.]

Effective date—2008 c 217: "This act takes effect July 1, 2009." [2008 c 217 § 102.]

48.03.030 Access to records on examination—Correction of accounts. (1) Every person being examined, its officers, employees, and representatives shall produce and make freely accessible to the commissioner the accounts, records, documents, and files in his or her possession or control relating to the subject of the examination, and shall otherwise facilitate the examination.

(2) If the commissioner finds the accounts to be inadequate, or improperly kept or posted, he or she may employ experts to rewrite, post or balance them at the expense of the person being examined. [2009 c 549 § 7013; 1947 c 79 § .03.03; Rem. Supp. 1947 § 45.03.03.]

Chapter 48.04 RCW
HEARINGS AND APPEALS

Sections

48.04.030 Place of hearing.

48.04.030 Place of hearing. The hearing shall be held at the place designated by the commissioner, and at his or her discretion it may be open to the public. [2009 c 549 § 7014; 1947 c 79 § .04.03; Rem. Supp. 1947 § 45.04.03.]

Chapter 48.05 RCW
INSURERS—GENERAL REQUIREMENTS

Sections

48.05.110 Issuance of certificate of authority.
48.05.150 Notice of intention to refuse, revoke, or suspend.
48.05.160 Period of suspension.
48.05.210 Service of process—Procedure.
48.05.290 Withdrawal of insurer—Reinsurance.
48.05.370 Fiduciary relationship to insurer of officers, directors or corporation holding controlling interest.

48.05.110 Issuance of certificate of authority. If the commissioner finds that an insurer has met the requirements for and is fully entitled thereto under this code, he or she shall issue to it a proper certificate of authority. If the commissioner does not so find, the authority shall be refused within a reasonable length of time following completion by the insurer of the application therefor. [2009 c 549 § 7015; 1947 c 79 § .05.11; Rem. Supp. 1947 § 45.05.11.]

48.05.150 Notice of intention to refuse, revoke, or suspend. The commissioner shall give an insurer notice of his or her intention to suspend, revoke, or refuse to renew its certificate of authority not less than ten days before the order of suspension, revocation or refusal is to become effective; except that no advance notice of intention is required where the order results from a domestic insurer's failure to make good a deficiency of assets as required by the commissioner. [2009 c 549 § 7016; 1947 c 79 § .05.15; Rem. Supp. 1947 § 45.05.15.]

48.05.160 Period of suspension. The commissioner shall not suspend an insurer's certificate of authority for a period in excess of one year, and he or she shall state in his or her order of suspension the period during which it shall be effective. [2009 c 549 § 7017; 1947 c 79 § .05.16; Rem. Supp. 1947 § 45.05.16.]

48.05.210 Service of process—Procedure. (1) Duplicate copies of legal process against an insurer for whom the commissioner is attorney shall be served upon him or her either by a person competent to serve a summons, or by registered mail. At the time of service the plaintiff shall pay to the commissioner ten dollars, taxable as costs in the action.

(2) The commissioner shall forthwith send one of the copies of the process, by registered mail with return receipt requested, to the person designated for the purpose by the insurer in its most recent such designation filed with the commissioner.

(3) The commissioner shall keep a record of the day and hour of service upon him or her of all legal process. No proceedings shall be had against the insurer, and the insurer shall not be required to appear, plead, or answer until the expiration of forty days after the date of service upon the commissioner. [2009 c 549 § 7018; 1981 c 339 § 3; 1947 c 79 § .05.21; Rem. Supp. 1947 § 45.05.21.]

48.05.290 Withdrawal of insurer—Reinsurance. (1) No insurer shall withdraw from this state until its direct liability to its policyholders and obligees under all its insurance contracts then in force in this state has been assumed by another authorized insurer under an agreement approved by the commissioner. In the case of a life insurer, its liability pursuant to contracts issued in this state in settlement of proceeds under its policies shall likewise be so assumed.

(2) The commissioner may waive this requirement if he or she finds upon examination that a withdrawing insurer is

then fully solvent and that the protection to be given its policyholders in this state will not be impaired by the waiver.

(3) The assuming insurer shall within a reasonable time replace the assumed insurance contracts with its own, or by endorsement thereon acknowledge its liability thereunder. [2009 c 549 § 7019; 1947 c 79 § .05.29; Rem. Supp. 1947 § 45.05.29.]

48.05.370 Fiduciary relationship to insurer of officers, directors or corporation holding controlling interest. Officers and directors of an insurer or a corporation holding a controlling interest in an insurer shall be deemed to stand in a fiduciary relation to the insurer, and shall discharge the duties of their respective positions in good faith, and with that diligence, care and skill which ordinary prudent persons would exercise under similar circumstances in like positions. [2009 c 549 § 7020; 1969 ex.s. c 241 § 1.]

Chapter 48.06 RCW
ORGANIZATION OF DOMESTIC INSURERS

Sections

48.06.050 Procedure upon application.
48.06.070 Duration of permit—Contents.
48.06.100 Modification, revocation of permit.
48.06.110 Bond—Cash deposit.
48.06.180 Subsequent financing.

48.06.050 Procedure upon application. The commissioner shall expeditiously examine the application for a solicitation permit and make any investigation relative thereto deemed necessary. If the commissioner finds that

(1) the application is complete; and

(2) the documents therewith filed are equitable in terms and proper in form; and

(3) the management of the company, whether by its directors, officers, or by any other means is competent and trustworthy and not so lacking in managerial experience as to make a proposed operation hazardous to the insurance-buying public; and that there is no reason to believe the company is affiliated, directly or indirectly, through ownership, control, reinsurance, or other insurance or business relations, with any other person or persons whose business operations are or have been marked, to the detriment of the policyholders or stockholders or investors or creditors or of the public, by bad faith or by manipulation of assets, or of accounts, or of reinsurance; and

(4) the agreements made or proposed are equitable to present and future shareholders, subscribers, members or policyholders, he or she shall give notice to the applicant that he or she will issue a solicitation permit, stating the terms to be contained therein, upon the filing of the bond required by RCW 48.06.110 of this code.

If the commissioner does not so find, he or she shall give notice to the applicant that the permit will not be granted, stating the grounds therefor, and shall refund to the applicant all sums so deposited except the application fee. [2009 c 549 § 7021; 1967 c 150 § 7; 1947 c 79 § .06.05; Rem. Supp. 1947 § 45.06.05.]

48.06.070 Duration of permit—Contents. Every solicitation permit issued by the commissioner shall:

(1) Be for a period of not over two years, subject to the right of the commissioner to grant a reasonable extension for good cause.

(2) State the securities for which subscriptions are to be solicited, the number, classes, par value, and selling price thereof, or identify the insurance contract for which applications and advance premiums or deposits are to be solicited.

(3) Limit the portion of funds received on account of stock or syndicate subscriptions, if any are proposed to be taken, which may be used for promotion and organization expenses to such amount as he or she deems adequate, but in no event to exceed fifteen percent of such funds as and when actually received.

(4) If to be a mutual or reciprocal insurer, limit the portion of funds received on account of applications for insurance which may be used for promotion or organization expenses to a reasonable commission upon such funds, giving consideration to the kind of insurance and policy involved and to the costs incurred by insurers generally in the production of similar business, and provide that no such commission shall be deemed to be earned nor be paid until the insurer has received its certificate of authority and the policies applied for and upon which such commission is to be based, have been actually issued and delivered.

(5) Contain such other information required by this chapter or reasonable conditions relative to accounting and reports or otherwise as the commissioner deems necessary. [2009 c 549 § 7022; 1953 c 197 § 1; 1947 c 79 § .06.07; Rem. Supp. 1947 § 45.06.07.]

48.06.100 Modification, revocation of permit. (1) The commissioner may, for cause, modify a solicitation permit, or may, after a hearing, revoke any solicitation permit for violation of any provision of this code, or of the terms of the permit, or of any proper order of the commissioner, or for misrepresentation.

(2) The commissioner shall revoke a solicitation permit if requested in writing by a majority of the syndicate members, or by a majority of the incorporators and two-thirds of the subscribers to stock or applicants for insurance in the proposed incorporated insurer or corporation, or if he or she is so requested by a majority of the subscribers of a proposed reciprocal insurer. [2009 c 549 § 7023; 1947 c 79 § .06.10; Rem. Supp. 1947 § 45.06.10.]

48.06.110 Bond—Cash deposit. (1) The commissioner shall not issue a solicitation permit until the person applying therefor files with him or her a corporate surety bond in the penalty of fifty thousand dollars, in favor of the state and for the use and benefit of the state and of subscribers and creditors of the proposed organization.

The bond shall be conditioned upon the payment of costs incurred by the state in event of any legal proceedings for liquidation or dissolution of the proposed organization before completion of organization or in event a certificate of authority is not granted; and upon a full accounting for funds received until the proposed insurer has been granted its certificate of authority, or until the proposed corporation or syndi-

cate has completed its organization as defined in the solicitation permit.

(2) In lieu of filing such bond, the person may deposit with the commissioner fifty thousand dollars in cash or in United States government bonds at par value, to be held in trust upon the same conditions as required for the bond.

(3) The commissioner may waive the requirement for a bond or deposit in lieu thereof if the permit provides that:

(a) The proposed securities are to be distributed solely and finally to those few persons who are the active promotors intimate to the formation of the insurer, or other corporation or syndicate, or

(b) The securities are to be issued in connection with subsequent financing as provided in RCW 48.06.180.

(4) Any bond filed or deposit or remaining portion thereof held under this section shall be released and discharged upon settlement or termination of all liabilities against it. [2009 c 549 § 7024; 1969 ex.s. c 241 § 2; 1955 c 86 § 2; 1953 c 197 § 2; 1947 c 79 § .06.11; Rem. Supp 1947 § 45.06.11.]

Effective date—Supervision of transfers—1955 c 86: See notes following RCW 48.05.080.

48.06.180 Subsequent financing. (1) No domestic insurer, or insurance holding corporation, or stock corporation for financing operations of a mutual insurer, or attorney-in-fact corporation of a reciprocal insurer, after

(a) it has received a certificate of authority, if an insurer, or

(b) it has completed its initial organization and financing if a corporation other than an insurer, shall solicit or receive funds in exchange for any new issue of its corporate securities, other than through a stock dividend, until it has applied to the commissioner for, and has been granted, a solicitation permit.

(2) The commissioner shall issue such a permit unless he or she finds that:

(a) The funds proposed to be secured are excessive in amount for the purpose intended, or

(b) the proposed securities or the manner of their distribution are inequitable, or

(c) the issuance of the securities would jeopardize the interests of policyholders or the holders of other securities of the insurer or corporation.

(3) Any such solicitation permit granted by the commissioner shall be for such duration, and shall contain such terms and be issued upon such conditions as the commissioner may reasonably specify or require. [2009 c 549 § 7025; 1949 c 190 § 6; 1947 c 79 § .06.18; Rem. Supp. 1949 § 45.06.18.]

Chapter 48.07 RCW
DOMESTIC INSURERS—POWERS

Sections

48.07.080 Guarantee of officers' obligations prohibited.
48.07.150 Solicitations in other states.
48.07.160 Continuing operation in event of emergency—Declaration of purpose—"Insurer" defined. *(Effective January 1, 2011.)*
48.07.170 Continuing operation in event of emergency—Emergency bylaws. *(Effective January 1, 2011.)*
48.07.180 Continuing operation in event of emergency—Directors. *(Effective January 1, 2011.)*
48.07.190 Continuing operation in event of emergency—Officers. *(Effective January 1, 2011.)*
48.07.200 Continuing operation in event of emergency—Principal office and place of business. *(Effective January 1, 2011.)*
48.07.203 Continuing operation in event of emergency—Written plan required. *(Effective January 1, 2011.)*
48.07.205 Continuing operation in event of emergency—Planning standards—Rules. *(Effective January 1, 2011.)*

48.07.080 Guarantee of officers' obligations prohibited. No domestic insurer or its affiliates or subsidiaries shall guarantee the financial obligation of any director or officer of such insurer or affiliate or subsidiary in his or her personal capacity, and any such guaranty attempted shall be void.

This prohibition shall not apply to obligations of the insurer under surety bonds or insurance contracts issued in the regular course of business. [2009 c 549 § 7026; 1947 c 79 § .07.08; Rem. Supp. 1947 § 45.07.08.]

48.07.150 Solicitations in other states. (1) No domestic insurer shall knowingly solicit insurance business in any reciprocating state in which it is not then licensed as an authorized insurer.

(2) This section shall not prohibit advertising through publications and radio broadcasts originating outside such reciprocating state, if the insurer is licensed in a majority of the states in which such advertising is disseminated, and if such advertising is not specifically directed to residents of such reciprocating state.

(3) This section shall not prohibit insurance, covering persons or risks located in a reciprocating state, under contracts solicited and issued in states in which the insurer is then licensed. Nor shall it prohibit insurance effectuated by the insurer as an unauthorized insurer in accordance with the laws of the reciprocating state. Nor shall it prohibit renewal or continuance in force, with or without modification, of contracts otherwise lawful and which were not originally executed in violation of this section.

(4) A "reciprocating" state, as used herein, is one under the laws of which a similar prohibition is imposed upon and is enforced against insurers domiciled in that state.

(5) The commissioner shall suspend or revoke the certificate of authority of a domestic insurer found by him or her, after a hearing, to have violated this section. [2009 c 549 § 7027; 1988 c 248 § 4; 1947 c 79 § .07.15; Rem. Supp. 1947 § 45.07.15.]

48.07.160 Continuing operation in event of emergency—Declaration of purpose—"Insurer" defined. ***(Effective January 1, 2011.)*** It is desirable for the general welfare and in particular for the welfare of insurance beneficiaries, policyholders, claimants, subscribers, and others that the business of domestic insurers be continued notwithstanding the event of a local, state, or national emergency. The purpose of this section, RCW 48.07.170 through 48.07.200, and 48.07.203 is to facilitate the continued operation of domestic insurers in the event that a local, state, or national emergency is so disruptive of normal business and commerce as to make it impossible or impracticable for a domestic insurer to conduct its business in accord with applicable provisions of law, its bylaws, or its charter. When used in this section, RCW 48.07.170 through 48.07.200, and 48.07.203

the word "insurer" means the same as defined in RCW 48.01.053 [48.01.050]. [2009 c 150 § 1; 1963 c 195 § 25.]

Effective date—2009 c 150: "This act takes effect January 1, 2011." [2009 c 150 § 8.]

48.07.170 Continuing operation in event of emergency—Emergency bylaws. ***(Effective January 1, 2011.)*** The board of directors of any domestic insurer may at any time adopt emergency bylaws, subject to repeal or change by action of those having power to adopt regular bylaws for such insurer, which shall be operative during such a local, state, or national emergency and which may, notwithstanding any different provisions of the regular bylaws, or of the applicable statutes, or of such insurer's charter, make any provision that may be reasonably necessary for the operation of such insurer during the period of such emergency. [2009 c 150 § 2; 1963 c 195 § 26.]

Effective date—2009 c 150: See note following RCW 48.07.160.

48.07.180 Continuing operation in event of emergency—Directors. ***(Effective January 1, 2011.)*** In the event that the board of directors of a domestic insurer has not adopted emergency bylaws, the following provisions shall become effective upon the occurrence of such a local, state, or national emergency as described in this chapter:

(1) Three directors shall constitute a quorum for the transaction of business at all meetings of the board.

(2) Any vacancy in the board may be filled by a majority of the remaining directors, though less than a quorum, or by a sole remaining director.

(3) If there are no surviving directors, but at least three vice presidents of such insurer survive, the three vice presidents with the longest term of service shall be the directors and shall possess all of the powers of the previous board of directors and such powers as are granted in this chapter or by subsequently enacted legislation. By majority vote, such emergency board of directors may elect other directors. If there are not at least three surviving vice presidents, the commissioner or duly designated person exercising the powers of the commissioner shall appoint three persons as directors who shall include any surviving vice presidents and who shall possess all of the powers of the previous board of directors and such powers as are granted in this chapter or by subsequently enacted legislation, and these persons by majority vote may elect other directors. [2009 c 150 § 3; 1963 c 195 § 27.]

Effective date—2009 c 150: See note following RCW 48.07.160.

48.07.190 Continuing operation in event of emergency—Officers. ***(Effective January 1, 2011.)*** At any time the board of directors of a domestic insurer may, by resolution, provide that in the event of such a local, state, or national emergency and in the event of the death or incapacity of the president, the secretary, or the treasurer of such insurer, such officers, or any of them, shall be succeeded in the office by the person named or described in a succession list adopted by the board of directors. Such list may be on the basis of named persons or position titles, shall establish the order of priority and may prescribe the conditions under which the powers of the office shall be exercised. [2009 c 150 § 4; 1963 c 195 § 28.]

Effective date—2009 c 150: See note following RCW 48.07.160.

48.07.200 Continuing operation in event of emergency—Principal office and place of business. ***(Effective January 1, 2011.)*** At any time the board of directors of a domestic insurer may, by resolution, provide that in the event of such a local, state, or national emergency the principal office and place of business of such insurer shall be at such location as is named or described in the resolution. Such resolution may provide for alternate locations and establish an order of preference. [2009 c 150 § 5; 1963 c 195 § 29.]

Effective date—2009 c 150: See note following RCW 48.07.160.

48.07.203 Continuing operation in event of emergency—Written plan required. ***(Effective January 1, 2011.)*** Each domestic insurer must create and maintain a written business continuity plan identifying procedures relating to a local, state, or national emergency or significant business disruption. [2009 c 150 § 6.]

Effective date—2009 c 150: See note following RCW 48.07.160.

48.07.205 Continuing operation in event of emergency—Planning standards—Rules. ***(Effective January 1, 2011.)*** After considering relevant standards adopted by the national association of insurance commissioners, other states, and other regulatory authorities that regulate financial institutions, the commissioner shall adopt, by rule, standards for insurers and insurance producers to follow for business continuity planning. [2009 c 150 § 7.]

Effective date—2009 c 150: See note following RCW 48.07.160.

Chapter 48.08 RCW
DOMESTIC STOCK INSURERS

Sections

48.08.020 Reduction of capital stock.
48.08.090 Stockholder meetings—Duty to inform stockholders of matters to be presented—Proxies.
48.08.100 Equity security—Defined.
48.08.110 Equity security—Duty to file statement of ownership.
48.08.120 Equity security—Profits from short term transactions—Remedies—Limitation of actions.
48.08.130 Equity security—Sales, unlawful practices.
48.08.140 Equity security—Exemptions—Sales by dealer.
48.08.170 Equity security—Rules and regulations.

48.08.020 Reduction of capital stock. (1) Reduction of the capital stock of a domestic stock insurer shall be by amendment of its articles of incorporation. No such reduction shall be made which results in capital stock less in amount than the minimum required by this code for the kinds of insurance thereafter to be transacted by the insurer.

(2) No surplus funds of the insurer resulting from a reduction of its capital stock shall be distributed to stockholders, except as a stock dividend on a subsequent increase of capital stock, or upon dissolution of the insurer, or upon approval of the commissioner of a distribution upon proof satisfactory to him or her that the distribution will not impair the interests of policyholders or the insurer's solvency.

(3) Upon such reduction of capital stock, the insurer's directors shall call in any outstanding stock certificates required to be changed pursuant thereto, and issue proper certificates in their stead. [2009 c 549 § 7028; 1947 c 79 § .08.02; Rem. Supp. 1947 § 45.08.02.]

48.08.090 Stockholder meetings—Duty to inform stockholders of matters to be presented—Proxies. (1) This section shall apply to all domestic stock insurers except:

(a) A domestic stock insurer having less than one hundred stockholders; except, that if ninety-five percent or more of the insurer's stock is owned or controlled by a parent or affiliated insurer, this section shall not apply to such insurer unless its remaining shares are held by five hundred or more stockholders.

(b) Domestic stock insurers which file with the Securities and Exchange Commission forms of proxies, consents and authorizations pursuant to the Securities and Exchange Act of 1934, as amended.

(2) Every such insurer shall seasonably furnish its stockholders in advance of stockholder meetings, information in writing reasonably adequate to inform them relative to all matters to be presented by the insurer's management for consideration of stockholders at such meeting.

(3) No person shall solicit a proxy, consent, or authorization in respect of any stock of such an insurer unless he or she furnishes the person so solicited with written information reasonably adequate as to

(a) the material matters in regard to which the powers so solicited are proposed to be used, and

(b) the person or persons on whose behalf the solicitation is made, and the interest of such person or persons in relation to such matters.

(4) No person shall so furnish to another, information which the informer knows or has reason to believe, is false or misleading as to any material fact, or which fails to state any material fact reasonably necessary to prevent any other statement made from being misleading.

(5) The form of all such proxies shall:

(a) Conspicuously state on whose behalf the proxy is solicited;

(b) Provide for dating the proxy;

(c) Impartially identify each matter or group of related matters intended to be acted upon;

(d) Provide means for the principal to instruct the vote of his shares as to approval or disapproval of each matter or group, other than election to office; and

(e) Be legibly printed, with context suitably organized.

Except, that a proxy may confer discretionary authority as to matters as to which choice is not specified pursuant to item (d), above, if the form conspicuously states how it is intended to vote the proxy or authorization in each such case; and may confer discretionary authority as to other matters which may come before the meeting but unknown for a reasonable time prior to the solicitation by the persons on whose behalf the solicitation is made.

(6) No proxy shall confer authority (a) to vote for election of any person to any office for which a bona fide nominee is not named in the proxy statement, or (b) to vote at any annual meeting (or adjournment thereof) other than the annual meeting next following the date on which the proxy statement and form were furnished stockholders.

(7) The commissioner shall have authority to make and promulgate reasonable rules and regulations for the effectuation of this section, and in so doing shall give due consideration to rules and regulations promulgated for similar purposes by the insurance supervisory officials of other states. [2009 c 549 § 7029; 1965 ex.s. c 70 § 5.]

Exemption from federal registration: 15 U.S.C. § 78 l(g)(2)(G).

48.08.100 Equity security—Defined. The term "equity security" when used in RCW 48.08.100 through 48.08.160 means any stock or similar security; or any security convertible, with or without consideration, into such a security, or carrying any warrant or right to subscribe to or purchase such a security; or any such warrant or right; or any other security which the commissioner shall deem to be of similar nature and consider necessary or appropriate, by such rules and regulations as he or she may prescribe in the public interest or for the protection of investors, to treat as an equity security. [2009 c 549 § 7030; 1965 ex.s. c 70 § 11.]

48.08.110 Equity security—Duty to file statement of ownership. Every person who is directly or indirectly the beneficial owner of more than ten percent of any class of any equity security of a domestic stock insurer, or who is a director or an officer of such insurer, shall file with the commissioner on or before the 30th day of September, 1965, or within ten days after he or she becomes such beneficial owner, director or officer, a statement, in such form as the commissioner may prescribe, of the amount of all equity securities of such insurer of which he or she is the beneficial owner, and within ten days after the close of each calendar month thereafter, if there has been a change in such ownership during such month, shall file with the commissioner a statement, in such form as the commissioner may prescribe, indicating his or her ownership at the close of the calendar month and such changes in his or her ownership as have occurred during such calendar month. [2009 c 549 § 7031; 1965 ex.s. c 70 § 6.]

48.08.120 Equity security—Profits from short term transactions—Remedies—Limitation of actions. For the purpose of preventing the unfair use of information which may have been obtained by such beneficial owner, director or officer by reason of his or her relationship to such insurer, any profit realized by him from any purchase and sale, or any sale and purchase, of any equity security of such insurer within any period of less than six months, unless such security was acquired in good faith in connection with a debt previously contracted, shall inure to and be recoverable by the insurer, irrespective of any intention on the part of such beneficial owner, director or officer in entering into such transaction of holding the security purchased or of not repurchasing the security sold for a period exceeding six months. Suit to recover such profit may be instituted at law or in equity in any court of competent jurisdiction by the insurer, or by the owner of any security of the insurer in the name and in behalf of the insurer if the insurer shall fail or refuse to bring such suit within sixty days after request or shall fail diligently to

prosecute the same thereafter: PROVIDED, That no such suit shall be brought more than two years after the date such profit was realized. This section shall not be construed to cover any transaction where such beneficial owner was not such both at the time of the purchase and sale, or the sale and purchase, of the security involved, or any transaction or transactions which the commissioner by rules and regulations may exempt as not comprehended within the purpose of this section. [2009 c 549 § 7032; 1965 ex.s. c 70 § 7.]

Exemption from federal registration: 15 U.S.C. § 78 l(g)(2)(G).

48.08.130 Equity security—Sales, unlawful practices. It shall be unlawful for any such beneficial owner, director or officer, directly or indirectly, to sell any equity security of such insurer if the person selling the security or his principal (1) does not own the security sold, or (2) if owning the security, does not deliver it against such sale within twenty days thereafter, or does not within five days after such sale deposit it in the mails or other usual channels of transportation: PROVIDED, That no person shall be deemed to have violated this section if he or she proves that notwithstanding the exercise of good faith he or she was unable to make such delivery or deposit within such time, or that to do so would cause undue inconvenience or expense. [2009 c 549 § 7033; 1965 ex.s. c 70 § 8.]

48.08.140 Equity security—Exemptions—Sales by dealer. The provisions of RCW 48.08.120 shall not apply to any purchase and sale, or sale and purchase, and the provisions of RCW 48.08.130 shall not apply to any sale of an equity security of a domestic stock insurer not then or theretofore held by him or her in an investment account, by a dealer in the ordinary course of his or her business and incident to the establishment or maintenance by him or her of a primary or secondary market (otherwise than on an exchange as defined in the Securities Exchange Act of 1934) for such security. The commissioner may, by such rules and regulations as he or she deems necessary or appropriate in the public interest, define and prescribe terms and conditions with respect to securities held in an investment account and transactions made in the ordinary course of business and incident to the establishment or maintenance of a primary or secondary market. [2009 c 549 § 7034; 1965 ex.s. c 70 § 9.]

48.08.170 Equity security—Rules and regulations. The commissioner shall have the power to make such rules and regulations as may be necessary for the execution of the functions vested in him or her by RCW 48.08.100 through 48.08.160, and may for such purpose classify domestic stock insurers, securities, and other persons or matters within his jurisdiction. No provision of RCW 48.08.110, 48.08.120, and 48.08.130 imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule or regulation of the commissioner, notwithstanding that such rule or regulation may, after such act or omission, be amended or rescinded or determined by judicial or other authority to be invalid for any reason. [2009 c 549 § 7035; 1965 ex.s. c 70 § 13.]

Chapter 48.09 RCW
MUTUAL INSURERS

Sections

48.09.130 Bylaws.
48.09.160 Directors—Disqualification.
48.09.220 Contingent liability of members.
48.09.230 Assessment of members.
48.09.270 Nonassessable policies.

48.09.130 Bylaws. A domestic mutual insurer shall adopt bylaws for the conduct of its affairs. Such bylaws, or any modification thereof, shall forthwith be filed with the commissioner. The commissioner shall disapprove any such bylaws, or as so modified, if he or she finds after a hearing thereon, that it is not in compliance with the laws of this state, and he or she shall forthwith communicate such disapproval to the insurer. No such bylaw, or modification, so disapproved shall be effective during the existence of such disapproval. [2009 c 549 § 7036; 1947 c 79 § .09.13; Rem. Supp. 1947 § 45.09.13.]

48.09.160 Directors—Disqualification. No individual shall be a director of a domestic mutual insurer by reason of his or her holding public office. Adjudication as a bankrupt or taking the benefit of any insolvency law or making a general assignment for the benefit of creditors disqualifies an individual from being or acting as a director. [2009 c 549 § 7037; 1947 c 79 § .09.16; Rem. Supp. 1947 § 45.09.16.]

48.09.220 Contingent liability of members. (1) Each member of a domestic mutual insurer, except as otherwise provided in this chapter, shall have a contingent liability, pro rata and not one for another, for the discharge of its obligations. The contingent liability shall be in such maximum amount as is stated in the insurer's articles of incorporation, but shall be not less than one, nor more than five, additional premiums for the member's policy at the annual premium rate and for a term of one year.

(2) Every policy issued by the insurer shall contain a statement of the contingent liability.

(3) Termination of the policy of any such member shall not relieve the member of contingent liability for his or her proportion of the obligations of the insurer which accrued while the policy was in force. [2009 c 549 § 7038; 1949 c 190 § 9; 1947 c 79 § .09.22; Rem. Supp. 1949 § 45.09.22.]

48.09.230 Assessment of members. (1) If at any time the assets of a domestic mutual insurer doing business on the cash premium plan are less than its liabilities and the minimum surplus, if any, required of it by this code as prerequisite for continuance of its certificate of authority, and the deficiency is not cured from other sources, its directors may, if approved by the commissioner, make an assessment only on its members who at any time within the twelve months immediately preceding the date such assessment was authorized by its directors held policies providing for contingent liability.

(2) Such an assessment shall be for such an amount of money as is required, in the opinion of the commissioner, to render the insurer fully solvent, but not to result in surplus in excess of five percent of the insurer's liabilities as of the date of the assessment.

(3) A member's proportionate part of any such assessment shall be computed by applying to the premium earned, during the period since the deficiency first appeared, on his or her contingently liable policy or policies the ratio of the total assessment to the total premium earned during such period on all contingently liable policies which are subject to the assessment.

(4) No member shall have an offset against any assessment for which he or she is liable on account of any claim for unearned premium or losses payable. [2009 c 549 § 7039; 1949 c 190 § 10; 1947 c 79 § .09.23; Rem. Supp. 1949 § 45.09.23.]

48.09.270 Nonassessable policies. (1) A domestic mutual insurer on the cash premium plan, after it has established a surplus not less in amount than the minimum capital funds required of a domestic stock insurer to transact like kinds of insurance, and for so long as it maintains such surplus, may extinguish the contingent liability of its members to assessment and omit provisions imposing contingent liability in all policies currently issued.

(2) Any deposit made with the commissioner as a prerequisite to the insurer's certificate of authority may be included as part of the surplus required in this section.

(3) When the surplus has been so established and the commissioner has so ascertained, he or she shall issue to the insurer, at its request, his or her certificate authorizing the extinguishment of the contingent liability of its members and the issuance of policies free therefrom.

(4) While it maintains surplus funds in amount not less than the minimum capital required of a domestic stock insurer authorized to transact like kinds of insurance, and subject to the requirements of *RCW 48.05.360 as to special surplus, a foreign or alien mutual insurer on the cash premium plan may, if consistent with its charter and the laws of its domicile, issue nonassessable policies covering subjects located, resident, or to be performed in this state. [2009 c 549 § 7040; 1963 c 195 § 4; 1947 c 79 § .09.27; Rem. Supp. 1947 § 45.09.27.]

***Reviser's note:** RCW 48.05.360 was repealed by 2005 c 223 § 35.

Chapter 48.10 RCW
RECIPROCAL INSURERS

Sections

48.10.140 Attorney's bond.
48.10.170 Service of legal process.
48.10.200 Determination of financial condition.
48.10.250 Assessment liability of subscriber.
48.10.260 Action against subscriber requires judgment against insurer.
48.10.270 Assessments.
48.10.280 Time limit for assessment.
48.10.300 Nonassessable policies.
48.10.330 Merger—Conversion to stock or mutual insurer.
48.10.340 Impairment of assets—Procedure.

48.10.140 Attorney's bond. (1) Concurrently with the filing of the declaration provided for in RCW 48.10.090, (or, if an existing domestic reciprocal insurer, within ninety days after the effective date of this code) the attorney of a domestic reciprocal shall file with the commissioner a bond running to the state of Washington. The bond shall be executed by the attorney and by an authorized corporate surety, and shall be subject to the commissioner's approval.

(2) The bond shall be in the penal sum of twenty-five thousand dollars, conditioned that the attorney will faithfully account for all moneys and other property of the insurer coming into his or her hands, and that he or she will not withdraw or appropriate for his or her own use from the funds of the insurer any moneys or property to which he or she is not entitled under the power of attorney.

(3) The bond shall provide that it is not subject to cancellation unless thirty days advance notice in writing of intent to cancel is given to both the attorney and the commissioner. [2009 c 549 § 7041; 1947 c 79 § .10.14; Rem. Supp. 1947 § 45.10.14.]

48.10.170 Service of legal process. (1) A certificate of authority shall not be issued to a domestic reciprocal insurer unless prior thereto the attorney has executed and filed with the commissioner the insurer's irrevocable authorization of the commissioner to receive legal process issued in this state against the insurer upon any cause of action arising within this state.

(2) The provisions of RCW 48.05.210 shall apply to service of such process upon the commissioner.

(3) In lieu of service on the commissioner, legal process may be served upon a domestic reciprocal insurer by serving the insurer's attorney at his or her principal offices.

(4) Any judgment against the insurer based upon legal process so served shall be binding upon each of the insurer's subscribers as their respective interests may appear and in an amount not exceeding their respective contingent liabilities. [2009 c 549 § 7042; 1947 c 79 § .10.17; Rem. Supp. 1947 § 45.10.17.]

48.10.200 Determination of financial condition. In determining the financial condition of a reciprocal insurer the commissioner shall apply the following rules:

(1) He or she shall charge as liabilities the same reserves as are required of incorporated insurers issuing nonassessable policies on a reserve basis.

(2) The surplus deposits of subscribers shall be allowed as assets, except that any premium deposit delinquent for ninety days shall first be charged against such surplus deposit.

(3) The surplus deposits of subscribers shall not be charged as a liability.

(4) All premium deposits delinquent less than ninety days shall be allowed as assets.

(5) An assessment levied upon subscribers, and not collected, shall not be allowed as an asset.

(6) The contingent liability of subscribers shall not be allowed as an asset.

(7) The computation of reserves shall be based upon premium deposits other than membership fees and without any deduction for the compensation of the attorney. [2009 c 549 § 7043; 1947 c 79 § .10.20; Rem. Supp. 1947 § 45.10.20.]

48.10.250 Assessment liability of subscriber. (1) The liability of each subscriber subject to assessment for the obli-

gations of the reciprocal insurer shall not be joint, but shall be individual and several.

(2) Each subscriber who is subject to assessment shall have a contingent assessment liability, in the amount provided for in the power of attorney or in the subscribers' agreement, for payment of actual losses and expenses incurred while his or her policy was in force. Such contingent liability may be at the rate of not less than one nor more than ten times the premium or premium deposit stated in the policy, and the maximum aggregate thereof shall be computed in the manner set forth in RCW 48.10.290.

(3) Each assessable policy issued by the insurer shall plainly set forth a statement of the contingent liability. [2009 c 549 § 7044; 1947 c 79 § .10.25; Rem. Supp. 1947 § 45.10.25.]

48.10.260 Action against subscriber requires judgment against insurer. (1) No action shall lie against any subscriber upon any obligation claimed against the insurer until a final judgment has been obtained against the insurer and remains unsatisfied for thirty days.

(2) Any such judgment shall be binding upon each subscriber only in such proportion as his or her interests may appear and in an amount not exceeding his or her contingent liability, if any. [2009 c 549 § 7045; 1947 c 79 § .10.26; Rem. Supp. 1947 § 45.10.26.]

48.10.270 Assessments. (1) Assessments may be levied from time to time upon the subscribers of a domestic reciprocal insurer, other than as to nonassessable policies, by the attorney upon approval in advance by the subscribers' advisory committee and the commissioner; or by the commissioner in liquidation of the insurer.

(2) Each such subscriber's share of a deficiency for which an assessment is made, not exceeding in any event his or her aggregate contingent liability as computed in accordance with RCW 48.10.290, shall be computed by applying to the premium earned on the subscriber's policy or policies during the period to be covered by the assessment, the ratio of the total deficiency to the total premiums earned during such period upon all policies subject to the assessment.

(3) In computing the earned premiums for the purposes of this section, the gross premium received by the insurer for the policy shall be used as a base, deducting therefrom solely charges not recurring upon the renewal or extension of the policy.

(4) No subscriber shall have an offset against any assessment for which he or she is liable, on account of any claim for unearned premium or losses payable. [2009 c 549 § 7046; 1947 c 79 § .10.27; Rem. Supp. 1947 § 45.10.27.]

48.10.280 Time limit for assessment. Every subscriber of a domestic reciprocal insurer having contingent liability shall be liable for, and shall pay his or her share of any assessment, as computed and limited in accordance with this chapter, if:

(1) While his or her policy is in force or within one year after its termination, he or she is notified by either the attorney or the commissioner of his or her intention to levy such assessment; or

(2) If an order to show cause why a receiver, conservator, rehabilitator, or liquidator of the insurer should not be appointed is issued pursuant to RCW 48.31.190 while his or her policy is in force or within one year after its termination. [2009 c 549 § 7047; 1947 c 79 § .10.28; Rem. Supp. 1947 § 45.10.28.]

48.10.300 Nonassessable policies. (1) Subject to the special surplus requirements of *RCW 48.05.360, if a reciprocal insurer has a surplus of assets over all liabilities at least equal to the minimum capital stock required of a domestic stock insurer authorized to transact like kinds of insurance, upon application of the attorney and as approved by the subscribers' advisory committee the commissioner shall issue his or her certificate authorizing the insurer to extinguish the contingent liability of subscribers under its policies then in force in this state, and to omit provisions imposing contingent liability in all policies delivered or issued for delivery in this state for so long as all such surplus remains unimpaired.

(2) Upon impairment of such surplus, the commissioner shall forthwith revoke the certificate. No policy shall thereafter be issued or renewed without providing for the contingent assessment liability of subscribers.

(3) The commissioner shall not authorize a domestic reciprocal insurer so to extinguish the contingent liability of any of its subscribers or in any of its policies to be issued, unless it qualifies to and does extinguish such liability of all its subscribers and in all such policies for all kinds of insurance transacted by it. Except, that if required by the laws of another state in which the insurer is transacting insurance as an authorized insurer, the insurer may issue policies providing for the contingent liability of such of its subscribers as may acquire such policies in such state, and need not extinguish the contingent liability applicable to policies theretofore in force in such state. [2009 c 549 § 7048; 1983 c 3 § 148; 1947 c 79 § .10.30; Rem. Supp. 1947 § 45.10.30.]

***Reviser's note:** RCW 48.05.360 was repealed by 2005 c 223 § 35.

48.10.330 Merger—Conversion to stock or mutual insurer. (1) A domestic reciprocal insurer, upon affirmative vote of not less than two-thirds of the subscribers who vote upon such merger pursuant to such notice as may be approved by the commissioner and with the approval of the commissioner of the terms therefor, may merge with another reciprocal insurer or be converted to a stock or mutual insurer.

(2) Such a stock or mutual insurer shall be subject to the same capital requirements and shall have the same rights as a like domestic insurer transacting like kinds of insurance.

(3) The commissioner shall not approve any plan for such merger or conversion which is inequitable to subscribers, or which, if for conversion to a stock insurer, does not give each subscriber preferential right to acquire stock of the proposed insurer proportionate to his or her interest in the reciprocal insurer as determined in accordance with RCW 48.10.320 and a reasonable length of time within which to exercise such right. [2009 c 549 § 7049; 1947 c 79 § .10.33; Rem. Supp. 1947 § 45.10.33.]

48.10.340 Impairment of assets—Procedure. (1) If the assets of a domestic reciprocal insurer are at any time insufficient to discharge its liabilities other than any liability on account of funds contributed by the attorney, and to maintain the surplus required for the kinds of insurance it is authorized to transact, its attorney shall forthwith levy an assessment upon subscribers made subject to assessment by the terms of their policies for the amount needed to make up the deficiency.

(2) If the attorney fails to make the assessment within thirty days after the commissioner orders him or her to do so, or if the deficiency is not fully made up within sixty days after the date the assessment was made, the insurer shall be deemed insolvent and shall be proceeded against as authorized by this code.

(3) If liquidation of such an insurer is ordered, an assessment shall be levied upon the subscribers for such an amount, subject to limits as provided by this chapter, as the commissioner determines to be necessary to discharge all liabilities of the insurer, exclusive of any funds contributed by the attorney, but including the reasonable cost of the liquidation. [2009 c 549 § 7050; 1947 c 79 § .10.34; Rem. Supp. 1947 § 45.10.34.]

Chapter 48.11 RCW
INSURING POWERS

Sections

48.11.080 "Surety insurance" defined.

48.11.080 "Surety insurance" defined. "Surety insurance" includes:

(1) Credit insurance as defined in subdivision (9) of RCW 48.11.070.

(2) Bail bond insurance.

(3) Fidelity insurance, which is insurance guaranteeing the fidelity of persons holding positions of public or private trust.

(4) Guaranteeing the performance of contracts, other than insurance policies, and guaranteeing and executing bonds, undertakings, and contracts of suretyship.

(5) Indemnifying banks, bankers, brokers, financial or moneyed corporations or associations against loss resulting from any cause of bills of exchange, notes, bonds, securities, evidence of debts, deeds, mortgages, warehouse receipts, or other valuable papers, documents, money, precious metals and articles made therefrom, jewelry, watches, necklaces, bracelets, gems, precious and semiprecious stones, including any loss while the same are being transported in armored motor vehicles, or by messenger, but not including any other risks of transportation or navigation; also against loss or damage to such an insured's premises, or to his or her furnishings, fixtures, equipment, safes and vaults therein, caused by burglary, robbery, theft, vandalism or malicious mischief, or any attempt thereat. [2009 c 549 § 7051; 1967 c 150 § 8; 1947 c 79 § .11.08; Rem. Supp. 1947 § 45.11.08.]

Chapter 48.12 RCW
ASSETS AND LIABILITIES

Sections

48.12.010 "Assets" defined.
48.12.080 Increased reserves.
48.12.140 "Loss payments," "loss expense" defined.

48.12.010 "Assets" defined. In any determination of the financial condition of any insurer there shall be allowed as assets only such assets as belong wholly and exclusively to the insurer, which are registered, recorded, or held under the insurer's name, and which consist of:

(1) Cash in the possession of the insurer or in transit under its control, and the true balance of any deposit of the insurer in a solvent bank or trust company;

(2) Investments, securities, properties, and loans acquired or held in accordance with this code, and in connection therewith the following items:

(a) Interest due or accrued on any bond or evidence of indebtedness which is not in default and which is not valued on a basis including accrued interest.

(b) Declared and unpaid dividends on stocks and shares unless such amount has otherwise been allowed as an asset.

(c) Interest due or accrued upon a collateral loan in an amount not to exceed one year's interest thereon.

(d) Interest due or accrued on deposits in solvent banks and trust companies, and interest due or accrued on other assets if such interest is in the judgment of the commissioner a collectible asset.

(e) Interest due or accrued on a mortgage loan, in amount not exceeding in any event the amount, if any, of the difference between the unpaid principal and the value of the property less delinquent taxes thereon; but if any interest on the loan is in default more than one hundred eighty days, or if any interest on the loan is in default and any taxes or any installment thereof on the property are and have been due and unpaid for more than one hundred eighty days, no allowance shall be made for any interest on the loan.

(f) Rent due or accrued on real property if such rent is not in arrears for more than three months;

(3) Premium notes, policy loans, and other policy assets and liens on policies of life insurance, in amount not exceeding the legal reserve and other policy liabilities carried on each individual policy;

(4) The net amount of uncollected and deferred premiums in the case of a life insurer which carries the full annual mean tabular reserve liability;

(5) Premiums in the course of collection, other than for life insurance, not more than ninety days past due, less commissions payable thereon. The foregoing limitation shall not apply to premiums payable directly or indirectly by the United States government or any of its instrumentalities;

(6) Installment premiums other than life insurance premiums, in accordance with regulations prescribed by the commissioner consistent with practice formulated or adopted by the National Association of Insurance Commissioners;

(7) Notes and like written obligations not past due, taken for premiums other than life insurance premiums, on policies permitted to be issued on such basis, to the extent of the unearned premium reserves carried thereon and unless otherwise required by regulation prescribed by the commissioner;

(8) Reinsurance recoverable subject to RCW 48.12.160;

(9) Amounts receivable by an assuming insurer representing funds withheld by a solvent ceding insurer under a reinsurance treaty;

(10) Deposits or equities recoverable from underwriting associations, syndicates and reinsurance funds, or from any suspended banking institution, to the extent deemed by the commissioner available for the payment of losses and claims and at values to be determined by him or her;

(11) Electronic and mechanical machines constituting a data processing and accounting system if the cost of such system is at least twenty-five thousand dollars, which cost shall be amortized in full over a period not to exceed three calendar years; and

(12) Other assets, not inconsistent with the foregoing provisions, deemed by the commissioner available for the payment of losses and claims, at values to be determined by him or her. [2009 c 549 § 7052; 2007 c 80 § 2; 1977 ex.s. c 180 § 2; 1963 c 195 § 11; 1947 c 79 § .12.01; Rem. Supp. 1947 § 45.12.01.]

48.12.080 Increased reserves. (1) If the commissioner determines that an insurer's unearned premium reserves, however computed, are inadequate, he or she may require the insurer to compute such reserves or any part thereof according to such other method or methods as are prescribed in this chapter.

(2) If the loss experience of an insurer shows that its loss reserves, however estimated, are inadequate, the commissioner shall require the insurer to maintain loss reserves in such increased amount as is needed to make them adequate. [2009 c 549 § 7053; 1947 c 79 § .12.08; Rem. Supp. 1947 § 45.12.08.]

48.12.140 "Loss payments," "loss expense" defined. "Loss payments" and "loss expense payments" as used with reference to liability and workers' compensation insurances shall include all payments to claimants, payments for medical and surgical attendance, legal expenses, salaries and expenses of investigators, adjusters and claims field representatives, rents, stationery, telegraph and telephone charges, postage, salaries and expenses of office employees, home office expenses and all other payments made on account of claims, whether such payments are allocated to specific claims or are unallocated. [2009 c 549 § 7054; 1987 c 185 § 22; 1947 c 79 § .12.14; Rem. Supp. 1947 § 45.12.14.]

Intent—Severability—1987 c 185: See notes following RCW 51.12.130.

Chapter 48.13 RCW
INVESTMENTS

Sections

48.13.350 Record of investments.
48.13.450 Safeguarding securities—Definitions.

48.13.350 Record of investments. (1) As to each investment or loan of the funds of a domestic insurer a written record in permanent form showing the authorization thereof shall be made and signed by an officer of the insurer or by the chair of such committee authorizing the investment or loan.

(2) As to each such investment or loan the insurer's records shall contain:

(a) In the case of loans: The name of the borrower; the location and legal description of the property; a physical description, and the appraised value of the security; the amount of the loan, rate of interest and terms of repayment.

(b) In the case of securities: The name of the obligor; a description of the security and the record of earnings; the amount invested, the rate of interest or dividend, the maturity and yield based upon the purchase price.

(c) In the case of real estate: The location and legal description of the property; a physical description and the appraised value; the purchase price and terms.

(d) In the case of all investments:

(i) The amount of expenses and commissions if any incurred on account of any investment or loan and by whom and to whom payable if not covered by contracts with mortgage loan representatives or correspondents which are part of the insurer's records.

(ii) The name of any officer or director of the insurer having any direct, indirect, or contingent interest in the securities or loan representing the investment, or in the assets of the person in whose behalf the investment or loan is made, and the nature of such interest. [2009 c 549 § 7055; 1949 c 190 § 20; 1947 c 79 § .13.35; Rem. Supp. 1949 § 45.13.35.]

48.13.450 Safeguarding securities—Definitions. The definitions in this section apply throughout RCW 48.13.450 through 48.13.475 unless the context clearly requires otherwise.

(1) "Agent" means a national bank, state bank, trust company, or broker/dealer that maintains an account in its name in a clearing corporation or that is a member of the federal reserve system and through which a custodian participates in a clearing corporation, including the treasury/reserve automated debt entry securities system (TRADES) or treasury direct systems; except that with respect to securities issued by institutions organized or existing under the laws of a foreign country or securities used to meet the deposit requirements pursuant to laws of a foreign country as a condition of doing business therein, "agent" may include a corporation that is organized or existing under the laws of a foreign country and that is legally qualified under those laws to accept custody of securities.

(2) "Broker/dealer" means a broker or dealer as defined in RCW 62A.8-102(1)(c), that is registered with and subject to the jurisdiction of the securities and exchange commission, maintains membership in the securities investor protection corporation, and has a tangible net worth equal to or greater than two hundred fifty million dollars.

(3) "Clearing corporation" means a corporation as defined in RCW 62A.8-102(1)(e) that is organized for the purpose of effecting transactions in securities by computerized book-entry, except that with respect to securities issued by institutions organized or existing under the laws of any foreign country or securities used to meet the deposit requirements pursuant to the laws of a foreign country as a condition of doing business therein, "clearing corporation" may include a corporation that is organized or existing under the laws of

any foreign country and is legally qualified under such laws to effect transactions in securities by computerized book-entry. "Clearing corporation" also includes treasury/reserve automated debt entry securities system and treasury direct book-entry securities systems established pursuant to 31 U.S.C. Sec. 3100 et seq., 12 U.S.C. pt. 391, and 5 U.S.C. pt. 301.

(4) "Commissioner" means the insurance commissioner of the state of Washington.

(5) "Custodian" means:

(a) A national bank, state bank, or trust company that shall, at all times acting as a custodian, be no less than adequately capitalized as determined by the standards adopted by United States banking regulators and that is regulated by either state banking laws or is a member of the federal reserve system and that is legally qualified to accept custody of securities; except that with respect to securities issued by institutions organized or existing under the laws of a foreign country, or securities used to meet the deposit requirements pursuant to laws of a foreign country as a condition of doing business therein, "custodian" may include a bank or trust company incorporated or organized under the laws of a country other than the United States that is regulated as such by that country's government or an agency thereof that shall at all times acting as a custodian be no less than adequately capitalized as determined by the standards adopted by the international banking authorities and legally qualified to accept custody of securities; or

(b) A broker/dealer.

(6) "Custodied securities" means securities held by the custodian or its agent or in a clearing corporation, including the treasury/reserve automated debt entry securities system (TRADES) or treasury direct systems.

(7) "Securities" means instruments as defined in RCW 62A.8-102(1)(o).

(8) "Securities certificate" has the same meaning as in RCW 62A.8-102(1)(d).

(9) "Tangible net worth" means shareholders equity, less intangible assets, as reported in the broker/dealer's most recent annual or transition report pursuant to section 13 or 15(d) of the securities exchange act of 1934 (S.E.C. Form 10-K) filed with the securities and exchange commission.

(10) "Treasury/reserve automated debt entry securities system" ("TRADES") and "treasury direct" mean book-entry securities systems established pursuant to 31 U.S.C. Sec. 3100 et seq., 12 U.S.C. pt. 391, and 5 U.S.C. pt. 301, with the operation of TRADES and treasury direct subject to 31 C.F.R. pt. 357 et seq. [2009 c 161 § 2; 2008 c 234 § 1; 2000 c 221 § 1.]

Chapter 48.14 RCW
FEES AND TAXES

Sections

48.14.010 Fee schedule. *(Effective until July 1, 2010.)*
48.14.010 Fee schedule. *(Effective July 1, 2010.)*
48.14.020 Premium taxes.
48.14.0201 Premiums and prepayments tax—Health care services—Exemptions—State preemption.
48.14.070 Refunds.
48.14.080 Premium tax in lieu of other forms—Exceptions—Definition.
48.14.090 Determining amount of direct premium taxable in this state.

48.14.010 Fee schedule. *(Effective until July 1, 2010.)*

(1) The commissioner shall collect in advance the following fees:

(a)	**For filing charter documents:**	
	(i) Original charter documents, bylaws or record of organization of insurers, or certified copies thereof, required to be filed	$250.00
	(ii) Amended charter documents, or certified copy thereof, other than amendments of bylaws	$ 10.00
	(iii) No additional charge or fee shall be required for filing any of such documents in the office of the secretary of state.	
(b)	**Certificate of authority:**	
	(i) Issuance	$ 25.00
	(ii) Renewal	$ 25.00
(c)	**Annual statement of insurer, filing**	$ 20.00
(d)	**Organization or financing of domestic insurers and affiliated corporations:**	
	(i) Application for solicitation permit, filing	$100.00
	(ii) Issuance of solicitation permit	$ 25.00
(e)	**Insurance producer licenses:**	
	(i) License application	$ 55.00
	(ii) License renewal, every two years	$ 55.00
	(iii) Initial appointment and renewal of appointment of each insurance producer, every two years	$ 20.00
	(iv) Limited line insurance producer license application and renewal, every two years	$ 20.00
(f)	**Title insurance agent licenses:**	
	(i) License application	$ 50.00
	(ii) License renewal, every two years	$ 50.00
(g)	**Reinsurance intermediary licenses:**	
	(i) Reinsurance intermediary-broker, each year	$ 50.00
	(ii) Reinsurance intermediary-manager, each year	$100.00
(h)	**Surplus line broker license application and renewal, every two years**	$200.00
(i)	**Adjusters' licenses:**	
	(i) Independent adjuster, every two years	$ 50.00
	(ii) Public adjuster, every two years	$ 50.00
(j)	**Managing general agent appointment, every two years**	$200.00
(k)	**Examination for license, each examination:** All examinations, except examinations administered by an independent testing service, the fees for which are to be approved by the commissioner and collected directly by and retained by such independent testing service	$ 20.00

(l) Miscellaneous services:

(i)	Filing other documents	$ 5.00
(ii)	Commissioner's certificate under seal	$ 5.00
(iii)	Copy of documents filed in the commissioner's office, reasonable charge therefor as determined by the commissioner.	

(2) All fees so collected shall be remitted by the commissioner to the state treasurer not later than the first business day following, and shall be placed to the credit of the general fund.

(a) Fees for examinations administered by an independent testing service that are approved by the commissioner under subsection (1)(k) of this section shall be collected directly by the independent testing service and retained by it.

(b) Fees for copies of documents filed in the commissioner's office shall be remitted by the commissioner to the state treasurer not later than the first business day following, and shall be placed to the credit of the insurance commissioner's regulatory account. [2009 c 162 § 2; 2007 c 117 § 37; 2005 c 223 § 5; 1994 c 131 § 2; 1993 c 462 § 57; 1988 c 248 § 7; 1981 c 111 § 1; 1979 ex.s. c 269 § 1; 1977 ex.s. c 182 § 1; 1969 ex.s. c 241 § 8; 1967 c 150 § 12; 1955 c 303 § 4; 1947 c 79 § .14.01; Rem. Supp. 1947 § 45.14.01.]

Effective date—2009 c 162: See note following RCW 48.03.020.

Severability—Effective date—2007 c 117: See RCW 48.17.900 and 48.17.901.

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

Effective date, implementation—1979 ex.s. c 269: "This act shall take effect on April 1, 1980. The insurance commissioner is authorized to immediately take such steps as are necessary to insure that this 1979 act is implemented on its effective date." [1979 ex.s. c 269 § 10.]

48.14.010 Fee schedule. ***(Effective July 1, 2010.)*** (1) The commissioner shall collect in advance the following fees:

(a) For filing charter documents:

(i)	Original charter documents, bylaws or record of organization of insurers, or certified copies thereof, required to be filed	$250.00
(ii)	Amended charter documents, or certified copy thereof, other than amendments of bylaws	$ 10.00
(iii)	No additional charge or fee shall be required for filing any of such documents in the office of the secretary of state.	

(b) Certificate of authority:

(i)	Issuance	$ 25.00
(ii)	Renewal	$ 25.00

(c) Annual statement of insurer, filing $ 20.00

(d) Organization or financing of domestic insurers and affiliated corporations:

(i)	Application for solicitation permit, filing	$100.00
(ii)	Issuance of solicitation permit	$ 25.00

(e) Insurance producer licenses:

(i)	License application	$ 55.00
(ii)	License renewal, every two years	$ 55.00
(iii)	Initial appointment and renewal of appointment of each insurance producer, every two years	$ 20.00
(iv)	Limited line insurance producer license application and renewal, every two years	$ 20.00

(f) Title insurance agent licenses:

(i)	License application	$ 50.00
(ii)	License renewal, every two years	$ 50.00

(g) Reinsurance intermediary licenses:

(i)	Reinsurance intermediary-broker, each year	$ 50.00
(ii)	Reinsurance intermediary-manager, each year	$100.00

(h) Surplus line broker license application and renewal, every two years $200.00

(i) Adjusters' licenses:

(i)	Independent adjuster, every two years	$ 50.00
(ii)	Public adjuster, every two years	$ 50.00

(j) Managing general agent appointment, every two years $200.00

(k) Examination for license, each examination:

All examinations, except examinations administered by an independent testing service, the fees for which are to be approved by the commissioner and collected directly by and retained by such independent testing service $ 20.00

(l) Miscellaneous services:

(i)	Filing other documents	$ 5.00
(ii)	Commissioner's certificate under seal	$ 5.00
(iii)	Copy of documents filed in the commissioner's office, reasonable charge therefor as determined by the commissioner.	

(m) Self-service storage specialty insurance producer license application and renewal:

Every two years, $130.00 for an owner with under fifty employees or $375.00 for an owner with fifty or more employees; plus a location fee of $35.00 for each additional location of an owner.

(2) All fees so collected shall be remitted by the commissioner to the state treasurer not later than the first business day following, and shall be placed to the credit of the general fund.

(a) Fees for examinations administered by an independent testing service that are approved by the commissioner under subsection (1)(k) of this section shall be collected directly by the independent testing service and retained by it.

(b) Fees for copies of documents filed in the commissioner's office shall be remitted by the commissioner to the state treasurer not later than the first business day following, and shall be placed to the credit of the insurance commissioner's regulatory account. [2009 c 162 § 2; 2009 c 119 § 10; 2007 c 117 § 37; 2005 c 223 § 5; 1994 c 131 § 2; 1993 c 462 § 57; 1988 c 248 § 7; 1981 c 111 § 1; 1979 ex.s. c 269 § 1; 1977 ex.s. c 182 § 1; 1969 ex.s. c 241 § 8; 1967 c 150 § 12; 1955 c 303 § 4; 1947 c 79 § .14.01; Rem. Supp. 1947 § 45.14.01.]

Reviser's note: This section was amended by 2009 c 119 § 10 and by 2009 c 162 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2009 c 162: See note following RCW 48.03.020.

Effective date—2009 c 119: See RCW 48.170.900.

Severability—Effective date—2007 c 117: See RCW 48.17.900 and 48.17.901.

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

Effective date, implementation—1979 ex.s. c 269: "This act shall take effect on April 1, 1980. The insurance commissioner is authorized to immediately take such steps as are necessary to insure that this 1979 act is implemented on its effective date." [1979 ex.s. c 269 § 10.]

48.14.020 Premium taxes. (1) Subject to other provisions of this chapter, each authorized insurer except title insurers shall on or before the first day of March of each year pay to the state treasurer through the commissioner's office a tax on premiums. Except as provided in subsection (2) of this section, such tax shall be in the amount of two percent of all premiums, excluding amounts returned to or the amount of reductions in premiums allowed to holders of industrial life policies for payment of premiums directly to an office of the insurer, collected or received by the insurer under RCW 48.14.090 during the preceding calendar year other than ocean marine and foreign trade insurances, after deducting premiums paid to policyholders as returned premiums, upon risks or property resident, situated, or to be performed in this state. For tax purposes, the reporting of premiums shall be on a written basis or on a paid-for basis consistent with the basis required by the annual statement. For the purposes of this section the consideration received by an insurer for the granting of an annuity shall not be deemed to be a premium.

(2) In the case of insurers which require the payment by their policyholders at the inception of their policies of the entire premium thereon in the form of premiums or premium deposits which are the same in amount, based on the character of the risks, regardless of the length of term for which such policies are written, such tax shall be in the amount of two percent of the gross amount of such premiums and premium deposits upon policies on risks resident, located, or to be performed in this state, in force as of the thirty-first day of December next preceding, less the unused or unabsorbed portion of such premiums and premium deposits computed at the average rate thereof actually paid or credited to policyholders or applied in part payment of any renewal premiums or premium deposits on one-year policies expiring during such year.

(3) Each authorized insurer shall with respect to all ocean marine and foreign trade insurance contracts written within this state during the preceding calendar year, on or before the first day of March of each year pay to the state treasurer through the commissioner's office a tax of ninety-five one-hundredths of one percent on its gross underwriting profit. Such gross underwriting profit shall be ascertained by deducting from the net premiums (i.e., gross premiums less all return premiums and premiums for reinsurance) on such ocean marine and foreign trade insurance contracts the net losses paid (i.e., gross losses paid less salvage and recoveries on reinsurance ceded) during such calendar year under such contracts. In the case of insurers issuing participating contracts, such gross underwriting profit shall not include, for computation of the tax prescribed by this subsection, the amounts refunded, or paid as participation dividends, by such insurers to the holders of such contracts.

(4) The state does hereby preempt the field of imposing excise or privilege taxes upon insurers or their appointed insurance producers, other than title insurers, and no county, city, town or other municipal subdivision shall have the right to impose any such taxes upon such insurers or these insurance producers.

(5) If an authorized insurer collects or receives any such premiums on account of policies in force in this state which were originally issued by another insurer and which other insurer is not authorized to transact insurance in this state on its own account, such collecting insurer shall be liable for and shall pay the tax on such premiums. [2009 c 161 § 3; 2008 c 217 § 6; 1986 c 296 § 1; 1983 2nd ex.s. c 3 § 7; 1982 2nd ex.s. c 10 § 1; 1982 1st ex.s. c 35 § 15; 1979 ex.s. c 233 § 2; 1969 ex.s. c 241 § 9; 1947 c 79 § .14.02; Rem. Supp. 1947 § 45.14.02.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

Severability—1986 c 296: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1986 c 296 § 11.]

Application—1986 c 296 § 1: "[The 1986 c 296 amendment of] RCW 48.14.020 applies to the payment of taxes due beginning July 1, 1986, and thereafter." [1986 c 296 § 12.]

Effective date—1986 c 296: "Section 7 of this act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing institutions, and shall take effect immediately. The remainder of this act shall take effect July 1, 1986." [1986 c 296 § 13.]

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Payment of additional premium tax—1982 2nd ex.s. c 10: "The additional premium tax payments required by the amendment of RCW 48.14.020 by section 1 of this act shall be paid to the state treasurer through the insurance commissioner's office on March 1, 1983. Thereafter the prepayment schedule provided by RCW 48.14.025 shall apply." [1982 2nd ex.s. c 10 § 2.]

Severability—Effective dates—1982 1st ex.s. c 35: See notes following RCW 82.08.020.

Effective date—1979 ex.s. c 233: "This 1979 amendatory act shall become effective beginning upon and after January 1, 1980." [1979 ex.s. c 233 § 4.]

Intent—1979 ex.s. c 233: "It is the intent of the legislature to eliminate existing tax discrimination between qualified and nonqualified pension plans which are effectuated by annuity contracts, by excluding the consideration paid for such contracts from premiums subject to the premium tax." [1979 ex.s. c 233 § 1.]

Severability—1979 ex.s. c 233: "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the

remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 233 § 3.]

Credit against premium tax for assessments paid pursuant to RCW 48.32.060(1)(c): RCW 48.32.145.

Portion of state taxes on fire insurance premiums to be deposited in firefighters' pension fund: RCW 41.16.050.
volunteer firefighters' and reserve officers' relief and pension principal fund: RCW 41.24.030.

48.14.0201 Premiums and prepayments tax—Health care services—Exemptions—State preemption. (1) As used in this section, "taxpayer" means a health maintenance organization as defined in RCW 48.46.020, a health care service contractor as defined in RCW 48.44.010, or a self-funded multiple employer welfare arrangement as defined in RCW 48.125.010.

(2) Each taxpayer shall pay a tax on or before the first day of March of each year to the state treasurer through the insurance commissioner's office. The tax shall be equal to the total amount of all premiums and prepayments for health care services received by the taxpayer during the preceding calendar year multiplied by the rate of two percent.

(3) Taxpayers shall prepay their tax obligations under this section. The minimum amount of the prepayments shall be percentages of the taxpayer's tax obligation for the preceding calendar year recomputed using the rate in effect for the current year. For the prepayment of taxes due during the first calendar year, the minimum amount of the prepayments shall be percentages of the taxpayer's tax obligation that would have been due had the tax been in effect during the previous calendar year. The tax prepayments shall be paid to the state treasurer through the commissioner's office by the due dates and in the following amounts:

(a) On or before June 15, forty-five percent;

(b) On or before September 15, twenty-five percent;

(c) On or before December 15, twenty-five percent.

(4) For good cause demonstrated in writing, the commissioner may approve an amount smaller than the preceding calendar year's tax obligation as recomputed for calculating the health maintenance organization's, health care service contractor's, self-funded multiple employer welfare arrangement's, or certified health plan's prepayment obligations for the current tax year.

(5) Moneys collected under this section shall be deposited in the general fund.

(6) The taxes imposed in this section do not apply to:

(a) Amounts received by any taxpayer from the United States or any instrumentality thereof as prepayments for health care services provided under Title XVIII (medicare) of the federal social security act.

(b) Amounts received by any taxpayer from the state of Washington as prepayments for health care services provided under:

(i) The medical care services program as provided in RCW 74.09.035;

(ii) The Washington basic health plan on behalf of subsidized enrollees as provided in chapter 70.47 RCW; or

(iii) The medicaid program on behalf of elderly or clients with disabilities as provided in chapter 74.09 RCW when these prepayments are received prior to July 1, 2009, and are associated with a managed care contract program that has been implemented on a voluntary demonstration or pilot project basis.

(c) Amounts received by any health care service contractor, as defined in RCW 48.44.010, as prepayments for health care services included within the definition of practice of dentistry under RCW 18.32.020.

(d) Participant contributions to self-funded multiple employer welfare arrangements that are not taxable in this state.

(7) Beginning January 1, 2000, the state does hereby preempt the field of imposing excise or privilege taxes upon taxpayers and no county, city, town, or other municipal subdivision shall have the right to impose any such taxes upon such taxpayers. This subsection shall be limited to premiums and payments for health benefit plans offered by health care service contractors under chapter 48.44 RCW, health maintenance organizations under chapter 48.46 RCW, and self-funded multiple employer welfare arrangements as defined in RCW 48.125.010. The preemption authorized by this subsection shall not impair the ability of a county, city, town, or other municipal subdivision to impose excise or privilege taxes upon the health care services directly delivered by the employees of a health maintenance organization under chapter 48.46 RCW.

(8)(a) The taxes imposed by this section apply to a self-funded multiple employer welfare arrangement only in the event that they are not preempted by the employee retirement income security act of 1974, as amended, 29 U.S.C. Sec. 1001 et seq. The arrangements and the commissioner shall initially request an advisory opinion from the United States department of labor or obtain a declaratory ruling from a federal court on the legality of imposing state premium taxes on these arrangements. Once the legality of the taxes has been determined, the multiple employer welfare arrangement certified by the insurance commissioner must begin payment of these taxes.

(b) If there has not been a final determination of the legality of these taxes, then beginning on the earlier of (i) the date the fourth multiple employer welfare arrangement has been certified by the insurance commissioner, or (ii) April 1, 2006, the arrangement shall deposit the taxes imposed by this section into an interest bearing escrow account maintained by the arrangement. Upon a final determination that the taxes are not preempted by the employee retirement income security act of 1974, as amended, 29 U.S.C. Sec. 1001 et seq., all funds in the interest bearing escrow account shall be transferred to the state treasurer.

(9) The effect of transferring contracts for health care services from one taxpayer to another taxpayer is to transfer the tax prepayment obligation with respect to the contracts.

(10) On or before June 1st of each year, the commissioner shall notify each taxpayer required to make prepayments in that year of the amount of each prepayment and shall provide remittance forms to be used by the taxpayer. However, a taxpayer's responsibility to make prepayments is not affected by failure of the commissioner to send, or the taxpayer to receive, the notice or forms. [2009 c 479 § 41. Prior: 2005 c 405 § 1; 2005 c 223 § 6; 2005 c 7 § 1; 2004 c 260 § 24; 1998 c 323 § 1; 1997 c 154 § 1; 1993 sp.s. c 25 § 601; 1993 c 492 § 301.]

Effective date—2009 c 479: See note following RCW 2.56.030.

Effective date—2005 c 7: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 15, 2005]." [2005 c 7 § 3.]

Severability—Effective date—2004 c 260: See RCW 48.125.900 and 48.125.901.

Effective date—1997 c 154: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1997." [1997 c 154 § 2.]

Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25: See notes following RCW 82.04.230.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

48.14.070 Refunds. In event any person has paid to the commissioner any tax, license fee or other charge in error or in excess of that which he or she is lawfully obligated to pay, the commissioner shall upon written request made to him or her make a refund thereof. A person may only request a refund of taxes within six years from the date the taxes were paid. A person may only request a refund of fees or charges other than taxes within thirteen months of the date the fees or charges were paid. Refunds may be made either by crediting the amount toward payment of charges due or to become due from such person, or by making a cash refund. To facilitate such cash refunds the commissioner may establish a revolving fund out of funds appropriated by the legislature for his use. [2009 c 549 § 7056; 1979 ex.s. c 130 § 2; 1947 c 79 § .14.07; Rem. Supp. 1947 § 45.14.07.]

48.14.080 Premium tax in lieu of other forms—Exceptions—Definition. (1) As to insurers, other than title insurers and taxpayers under RCW 48.14.0201, the taxes imposed by this title shall be in lieu of all other taxes, except as otherwise provided in this section.

(2) Subsection (1) of this section does not apply with respect to:

(a) Taxes on real and tangible personal property;

(b) Excise taxes on the sale, purchase, use, or possession of (i) real property; (ii) tangible personal property; (iii) extended warranties; (iv) services, including digital automated services as defined in RCW 82.04.192; and (v) digital goods and digital codes as those terms are defined in RCW 82.04.192; and

(c) The tax imposed in RCW 82.04.260(10), regarding public and nonprofit hospitals.

(3) For the purposes of this section, the term "taxes" includes taxes imposed by the state or any county, city, town, municipal corporation, quasi-municipal corporation, or other political subdivision. [2009 c 535 § 1102; 2006 c 278 § 2; 1998 c 312 § 1; 1993 sp.s. c 25 § 602; 1993 c 492 § 302; 1949 c 190 § 21, part; Rem. Supp. 1949 § 45.14.08.]

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Findings—Intent—2006 c 278: "The legislature finds that the insurance premiums tax is intended to be in lieu of any other tax imposed on insurers. However, insurers are not exempt from taxes on real and tangible personal property, or excise taxes on the sale, purchase, or use of such property. These provisions, enacted in 1949, have not been reviewed or altered in light of significant expansion of sales and use taxes to include taxation of many service activities. Some insurers have interpreted their obligation to pay retail sales and use taxes to be limited to those taxes imposed on the sale or use of tangible personal property. These insurers claim exemption from retail sales tax, use tax, or any other excise tax on the purchase or sale of services, such as telephone service, credit bureau services, construction services, landscape services, and repair services. Other insurers have consistently paid excise taxes imposed on these services.

The legislature further finds exempting insurers from excise taxes on the purchase or sale of services is inequitable and results from the inadvertent failure to revise insurance premiums tax statutes to be consistent with other excise tax statutes. The legislature declares its intent to require insurers to pay retail sales and use taxes on purchases of both tangible personal property or services, on the same terms as other taxpayers. This act is intended to apply both prospectively and retrospectively." [2006 c 278 § 1.]

Application—2006 c 278: "This act applies both prospectively and retroactively." [2006 c 278 § 3.]

Effective date—2006 c 278: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 28, 2006]." [2006 c 278 § 4.]

Effective date—Savings—1998 c 312: See notes following RCW 82.04.332.

Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25: See notes following RCW 82.04.230.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

48.14.090 Determining amount of direct premium taxable in this state. In determining the amount of direct premium taxable in this state, all such premiums written, procured, or received in this state shall be deemed written upon risks or property resident, situated, or to be performed in this state except such premiums as are properly allocated or apportioned and reported as taxable premiums of any other state or states. For tax purposes, the reporting of premiums shall be on a written basis or on a paid-for basis consistent with the basis required by the annual statement. [2009 c 161 § 4; 1963 c 195 § 14.]

Chapter 48.15 RCW
UNAUTHORIZED INSURERS

Sections

48.15.015 Rules.
48.15.025 Application of other chapters to surplus line brokers.
48.15.070 Surplus line brokers—Licensing—Bond—Renewal.
48.15.073 Nonresident surplus line brokers—Licensing—Reciprocity—Service of process.
48.15.100 Record of surplus line broker.
48.15.103 Use of business name—Place of business—Duties of surplus line broker.
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48.15.120 Premium tax—Surplus lines.
48.15.140 Revocation, suspension, or failure to renew surplus line broker's license—Civil penalty.
48.15.142 Suspension for failure to comply with support order.
48.15.170 Records of insureds—Inspection.
48.15.180 Surplus line broker's fiduciary capacity—Violations.
48.15.185 Determination of qualifications and competence by state—Unlawful use of questions.

48.15.015 Rules. The commissioner may adopt rules to implement and administer this chapter. [2009 c 162 § 12.]

Effective date—2009 c 162: See note following RCW 48.03.020.

48.15.025 Application of other chapters to surplus line brokers. (1) A surplus line broker shall not engage in

any act prohibited by RCW 48.05.465(2), 48.43.335(2), and chapter 48.30 RCW.

(2) A surplus line broker is entitled to the immunities granted under RCW 48.43.105 and 48.50.070.

(3) The rights and prohibitions applicable to insurance producers contained in RCW 48.30.260, 48.30.270, and 48.62.121 also apply to surplus line brokers.

(4) The exemption for taxes and fees in RCW 48.62.151 does not apply to surplus line brokers. [2009 c 162 § 8.]

Effective date—2009 c 162: See note following RCW 48.03.020.

48.15.070 Surplus line brokers—Licensing—Bond—Renewal. Any individual while a resident of this state, or any firm or any corporation that has in its employ a qualified individual who is a resident of this state and who is authorized to exercise the powers of the firm or corporation, deemed by the commissioner to be competent and trustworthy, and while maintaining an office at a designated location in this state, may be licensed as a surplus line broker in accordance with this section.

(1) Application to the commissioner for the license shall be made on forms furnished by the commissioner. As part of, or in connection with, this application, the applicant shall furnish information concerning his or her identity, including fingerprints for submission to the Washington state patrol, the federal bureau of investigation, and any governmental agency or entity authorized to receive this information for a state and national criminal history background check; personal history; experience; business records; purposes; and other pertinent information, as the commissioner may reasonably require. If in the process of verifying fingerprints, business records, or other information, the commissioner's office incurs fees or charges from another governmental agency or from a business firm, the amount of the fees or charges shall be paid to the commissioner's office by the applicant.

(2) Every surplus line broker licensed under this chapter must maintain a bond in favor of the state of Washington in the penal sum of twenty thousand dollars, with authorized corporate sureties approved by the commissioner, conditioned that the licensee will conduct business under the license in accordance with the provisions of this chapter and that the licensee will promptly remit the taxes provided by RCW 48.15.120. The licensee shall maintain such bond in force for as long as the license remains in effect.

(3) Every surplus line broker licensed under this chapter must maintain in force while so licensed a bond in favor of the people of the state of Washington or a named insured such that the people of the state are covered by the bond, executed by an authorized corporate surety approved by the commissioner, in the amount of two thousand five hundred dollars, or five percent of the premiums from placement of coverage with surplus line insurers in the previous calendar year, whichever is greater, but not to exceed one hundred thousand dollars total aggregate liability. The bond may be continuous in form, and total aggregate liability on the bond may be limited to the required amount of the bond. The bond shall be contingent on the accounting by the surplus line broker to any person requesting the broker to obtain insurance, for moneys or premiums collected in connection therewith. A bond issued in accordance with RCW 48.17.250 or with this subsection will satisfy the requirements of both RCW 48.17.250 and this subsection if the limit of liability is not less than the greater of the requirement of RCW 48.17.250 or the requirement of this subsection.

(4) Authorized surplus line brokers of a business entity may meet the requirements of subsection (3) of this section with a bond in the name of the business entity, continuous in form, and in the amount set forth in subsection (3) of this section.

(5) Surplus line brokers may meet the requirements of this section with a bond in the name of an association. The association must have been in existence for five years, have common membership, and have been formed for a purpose other than obtaining a bond. An individual surplus line broker remains responsible for assuring that a bond is in effect and is for the correct amount.

(6) Members of an association may meet the requirements of subsection (3) of this section with a bond in the name of the association that is continuous in form and in the amounts set forth in subsection (3) of this section for each participating member.

(7) The surety may cancel the bond and be released from further liability thereunder upon thirty days' written notice in advance to the principal. The cancellation does not affect any liability incurred or accrued under the bond before the termination of the thirty-day period.

(8) Failure to have and maintain the bonds required under subsections (2) and (3) of this section is grounds for revocation of a license under RCW 48.15.140.

(9) If a party injured under the terms of the bond required under subsection (3) of this section requests the surplus line broker to provide the name of the surety and the bond number, the surplus line broker must provide the information within three working days after receiving the request.

(10) All records relating to the bonds required by this section must be kept available and open to the inspection of the commissioner at any business time.

(11) A surplus line broker's license expires if not timely renewed. Surplus line broker licenses are valid for the time period established by the commissioner unless suspended or revoked at an earlier date.

(12) Subject to the right of the commissioner to suspend, revoke, or refuse to renew any surplus line broker's license as provided in this title, the license may be renewed into another like period by filing with the commissioner by any means acceptable to the commissioner on or before the expiration date a request, by or on behalf of the licensee, for the renewal accompanied by payment of the renewal fee as specified in RCW 48.14.010.

(13) If the request and fee for renewal of a surplus line broker's license are filed with the commissioner prior to expiration of the existing license, the licensee may continue to act under the license, unless sooner revoked or suspended, until the issuance of a renewal license, or until the expiration of fifteen days after the commissioner has refused to renew the license and has mailed notification of the refusal to the licensee. If the request and fee for the license are not received by the expiration date, the authority conferred by the license ends on the expiration date.

(14) If the request for renewal of a surplus line broker's license and payment of the fee are not received by the com-

missioner prior to the expiration date, the applicant for renewal shall pay to the commissioner in addition to the renewal fee, a surcharge as follows:

(a) For the first thirty days or part thereof of delinquency, the surcharge is fifty percent of the renewal fee; and

(b) For the next thirty days or part thereof of delinquency, the surcharge is one hundred percent of the renewal fee.

(15) If the request for renewal of a surplus line broker's license and payment of the renewal fee are not received by the commissioner after sixty days but prior to twelve months after the expiration date, the application shall be for reinstatement of the license and the applicant for reinstatement shall pay to the commissioner the license fee and a surcharge of two hundred percent of the license fee.

(16) Subsections (14) and (15) of this section do not exempt any person from any penalty provided by law for transacting business without a valid and subsisting license.

(17) An individual surplus line broker who allows his or her license to lapse may, within twelve months after the expiration date, reinstate the same license without the necessity of passing a written examination.

(18) For the purposes of this section, a "qualified individual" is a natural person who has met all the requirements that must be met by an individual surplus line broker.

(19) The commissioner may require any documents reasonably necessary to verify the information contained in an application and may, from time to time, require any licensed surplus line broker to produce the information called for in an application for license. [2009 c 162 § 3; 2002 c 227 § 3; 1994 c 131 § 3; 1983 1st ex.s. c 32 § 24; 1982 c 181 § 5; 1981 c 199 § 1; 1980 c 102 § 3; 1979 ex.s. c 130 § 3; 1977 ex.s. c 182 § 2; 1959 c 225 § 4; 1947 c 79 § .15.07; Rem. Supp. 1947 § 45.15.07.]

Effective date—2009 c 162: See note following RCW 48.03.020.

Effective date—2002 c 227: See note following RCW 48.06.040.

Severability—1982 c 181: See note following RCW 48.03.010.

48.15.073 Nonresident surplus line brokers—Licensing—Reciprocity—Service of process. (1) The commissioner may license as a surplus line broker a person who is otherwise qualified under this code but who is not a resident of this state, if by the laws of the state or province of his or her residence or domicile a similar privilege is extended to residents of this state.

(2) A person under subsection (1) of this section must meet the same qualifications, other than residency, as any other person seeking to be licensed as a surplus line broker under this chapter. A person granted a nonresident surplus line broker's license must have all the same responsibilities as any other surplus line broker and is subject to the (a) commissioner's supervision as though resident in this state and (b) rules adopted under this chapter.

(3) A nonresident surplus line broker's license: (a) Expires and (b) is subject to the same renewal and fee requirements for renewal as a resident surplus line broker licensed under RCW 48.15.070.

(4) Each licensed nonresident surplus line broker shall appoint the commissioner as the surplus line broker's attorney to receive service of legal process issued against the surplus line broker in this state upon causes of action arising within this state. Service upon the commissioner as attorney constitutes effective legal service upon the surplus line broker.

(a) The appointment is irrevocable for as long as there could be any cause of action against the surplus line broker arising out of the surplus line broker's insurance transactions in this state.

(b) Duplicate copies of legal process against a surplus line broker shall be served upon the commissioner either by a person competent to serve a summons, or through registered mail. At the time of service the plaintiff shall pay to the commissioner ten dollars, taxable as costs in the action.

(c) Upon receiving service, the commissioner shall immediately send one of the copies of the process, by registered mail with return receipt requested, to the defendant surplus line broker at the surplus line broker's last address of record with the commissioner.

(d) The commissioner shall keep a record of the day and hour of service upon the commissioner of all legal process. Proceedings may not be had against the defendant surplus line broker and the defendant is not required to appear, plead, or answer until the expiration of forty days after the date of service upon the commissioner. [2009 c 162 § 4; 2001 c 91 § 1.]

Effective date—2009 c 162: See note following RCW 48.03.020.

48.15.100 Record of surplus line broker. (1) Each licensed surplus line broker shall keep a full and true record of each surplus line contract procured by him or her including a copy of the daily report, if any, showing such of the following items as may be applicable:

(a) Amount of the insurance;

(b) Gross premiums charged;

(c) Return premium paid, if any;

(d) Rate of premium charged upon the several items of property;

(e) Effective date of the contract, and the terms thereof;

(f) Name and address of the insurer;

(g) Name and address of the insured;

(h) Brief general description of property insured and where located;

(i) Other information as may be required by the commissioner.

(2) All such records as to any particular transaction shall be kept available and open to the inspection of the commissioner at any business time during the five years next following the date of completion of such transaction.

(3) For the purpose of ascertaining its condition, or compliance with this title, the commissioner may as often as he or she deems advisable, examine the accounts, records, documents, and transactions of any surplus line broker as set forth in chapter 48.03 RCW. [2009 c 162 § 5; 1955 c 303 § 6; 1947 c 79 § .15.10; Rem. Supp. 1947 § 45.15.10.]

Effective date—2009 c 162: See note following RCW 48.03.020.

48.15.103 Use of business name—Place of business—Duties of surplus line broker. (1) A surplus line broker doing business under any name other than the surplus line broker's legal name is required to register the name in accor-

dance with chapter 19.80 RCW and notify the commissioner before using the assumed name.

(2) Every licensed surplus line broker shall have and maintain in this state, or, if a nonresident surplus line broker, in this state or in the state of the licensee's domicile, a place of business accessible to the public. The place of business is where the surplus line broker principally conducts transactions under that person's license. A licensee maintaining more than one place of business in this state shall obtain a duplicate license or licenses for each additional place, and shall pay the full fee therefor.

(3) Any notice, order, or written communication from the commissioner to a person licensed under this chapter which directly affects the person's license shall be sent by mail to the person's last address of record with the commissioner.

(4) The license or licenses of each surplus line broker shall be displayed in a conspicuous place in that part of the place of business which is customarily open to the public.

(5) If a surplus line broker is dealing directly with the insured in any capacity, the surplus line broker must comply with the disclosure requirements contained in RCW 48.17.270.

(6) Every surplus line broker or other person licensed under this chapter shall promptly reply in writing to an inquiry of the commissioner relative to the business of insurance. A timely response is one that is received by the commissioner within fifteen business days from receipt of the inquiry. Failure to make a timely response constitutes a violation of this section.

(7) A surplus line broker shall report to the commissioner any administrative action taken against the surplus line broker in another jurisdiction or by another governmental agency in this state within thirty days of the final disposition of the matter. This report must include a copy of the order, consent to order, or other relevant legal documents.

(8) Within thirty days of the initial pretrial hearing date, a surplus line broker shall report to the commissioner any criminal prosecution of the surplus line broker taken in any jurisdiction. The report must include a copy of the initial complaint filed, the order resulting from the hearing, and any other relevant legal documents. [2009 c 162 § 6.]

Effective date—2009 c 162: See note following RCW 48.03.020.

48.15.110 Broker's annual statement. (1) Each surplus line broker shall on or before the first day of March of each year file with the commissioner a verified statement of all surplus line insurance transacted by him or her during the preceding calendar year.

(2) The statement shall be on forms as prescribed and furnished by the commissioner and shall show:

(a) Aggregate of net premiums;

(b) Additional information as required by the commissioner. [2009 c 549 § 7058; 1955 c 303 § 7; 1947 c 79 § .15.11; Rem. Supp. 1947 § 45.15.11.]

48.15.120 Premium tax—Surplus lines. (1) On or before the first day of March of each year each surplus line broker shall remit to the state treasurer through the commissioner a tax on the premiums, exclusive of sums collected to cover federal and state taxes and examination fees, on surplus line insurance subject to tax transacted by him or her during the preceding calendar year as shown by his or her annual statement filed with the commissioner, and at the same rate as is applicable to the premiums of authorized foreign insurers under this code. Such tax when collected shall be credited to the general fund.

(2) If a surplus line policy covers risks or exposures only partially in this state the tax so payable shall be computed upon the proportion of the premium which is properly allocable to the risks or exposures located in this state. [2009 c 549 § 7059; 1947 c 79 § .15.12; Rem. Supp. 1947 § 45.15.12.]

48.15.140 Revocation, suspension, or failure to renew surplus line broker's license—Civil penalty. (1) The commissioner may place on probation, revoke, suspend, or refuse to renew any surplus line broker's license, or may levy a civil penalty in accordance with RCW 48.17.560 or any combination of actions, for any one or more of the following causes:

(a) If the surplus line broker fails to file the licensee's annual statement or to remit the tax as required by this chapter; or

(b) If the surplus line broker fails to maintain an office in this state, or to keep the records, or to allow the commissioner to examine the licensee's records as required by this chapter; or

(c) For any of the causes for which an insurance producer's license may be revoked under chapter 48.17 RCW.

(2) The commissioner may suspend or revoke any such license whenever he or she deems suspension or revocation to be for the best interests of the people of this state.

(3) The procedures provided by this code for the suspension or revocation of insurance producers' licenses shall be applicable to suspension or revocation of a surplus line broker's license.

(4) A surplus line broker whose license has been so revoked shall not again be so licensed within one year thereafter, nor until any fines or delinquent taxes owing by the formal licensee have been paid. [2009 c 162 § 7; 2008 c 217 § 10; 1980 c 102 § 6; 1947 c 79 § .15.14; Rem. Supp. 1947 § 45.15.14.]

Effective date—2009 c 162: See note following RCW 48.03.020.

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

48.15.142 Suspension for failure to comply with support order. The commissioner shall immediately suspend the license or certificate of a person issued under this chapter who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license or certificate shall be automatic upon the commissioner's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order. [2009 c 162 § 10.]

Effective date—2009 c 162: See note following RCW 48.03.020.

48.15.170 Records of insureds—Inspection. Every person for whom insurance has been placed with an unauthorized insurer pursuant to or in violation of this chapter shall, upon the commissioner's order, produce for his or her examination all policies and other documents evidencing the insurance, and shall disclose to the commissioner the amount of the gross premiums paid or agreed to be paid for the insurance. For each refusal to obey such order, such person shall be liable to a fine of not more than five hundred dollars. [2009 c 549 § 7060; 1947 c 79 § .15.17; Rem. Supp. 1947 § 45.15.17.]

48.15.180 Surplus line broker's fiduciary capacity—Violations. (1) A surplus line broker, its representative, or any person licensed under this chapter involved in the procuring or issuance of an insurance contract and who receives any funds representing premiums or return premiums which belong to or should be paid to another person as a result of or in connection with an insurance transaction is deemed to have been received in the surplus line broker's fiduciary capacity and shall:

(a) Report to the insurer the exact amount of consideration charged as premium for the contract, and the amount shall likewise be shown in the contract and in the records of the surplus line broker;

(b) Be promptly accounted for and paid to the insured, insurer, or person entitled to the funds;

(c) Be accounted for and maintained in a separate account from all other business and personal funds and not commingle or otherwise combine premiums with any other moneys, except a surplus line broker may commingle with premium funds any additional funds as the surplus line broker may deem prudent for the purpose of advancing premiums, establishing reserves for the paying of return premiums, or for any contingencies as may arise in the surplus line broker's business of receiving and transmitting premium or return premium funds.

(2) Each willful violation of this section constitutes a misdemeanor.

(3) Any surplus line broker or other person licensed under this chapter who, not being lawfully entitled thereto, diverts or appropriates funds received in a fiduciary capacity or any portion thereof to his or her own use, is guilty of theft under chapter 9A.56 RCW. [2009 c 162 § 9.]

Effective date—2009 c 162: See note following RCW 48.03.020.

48.15.185 Determination of qualifications and competence by state—Unlawful use of questions. It is unlawful for any unauthorized person to remove, reproduce, duplicate, or distribute in any form, any question used by the state of Washington to determine the qualifications and competence of surplus line brokers required by this title to be licensed. This section does not prohibit an insurance education provider from creating and using sample test questions in courses approved by the commissioner.

Any person violating this section is subject to penalties as provided by RCW 48.01.080 and 48.15.140. [2009 c 162 § 11.]

Effective date—2009 c 162: See note following RCW 48.03.020.

Chapter 48.16 RCW
DEPOSITS OF INSURERS

Sections

48.16.080 Liability for safekeeping.
48.16.100 Release of deposits—Generally.

48.16.080 Liability for safekeeping. The state of Washington shall be responsible for the safekeeping and return of all funds and securities deposited pursuant to this chapter with the commissioner or in any such depositary so designated by him or her. [2009 c 549 § 7061; 1955 c 86 § 9; 1947 c 79 § .16.08; Rem. Supp. 1947 § 45.16.08.]

Effective date—Supervision of transfer—1955 c 86: See notes following RCW 48.05.080.

48.16.100 Release of deposits—Generally. (1) Any such required deposit shall be released in these instances only:

(a) Upon extinguishment of all liabilities of the insurer for the security of which the deposit is held, by reinsurance contract or otherwise.

(b) If any such deposit or portion thereof is no longer required under this code.

(c) If the deposit has been made pursuant to the retaliatory provision, RCW 48.14.040, it shall be released in whole or in part when no longer so required.

(d) Upon proper order of a court of competent jurisdiction the deposit shall be released to the receiver, conservator, rehabilitator, or liquidator of the insurer for whose account the deposit is held.

(2) No such release shall be made except on application to and written order of the commissioner made upon proof satisfactory to him or her of the existence of one of such grounds therefor. The commissioner shall have no personal liability for any such release of any deposit or part thereof so made by him or her in good faith.

(3) All releases of deposits or any part thereof shall be made to the person then entitled thereto upon proof of title satisfactory to the commissioner.

(4) Deposits held on account of title insurers are subject further to the provisions of chapter 48.29 RCW. [2009 c 549 § 7062; 1947 c 79 § .16.10; Rem. Supp. 1947 § 45.16.10.]

Chapter 48.17 RCW
INSURANCE PRODUCERS, TITLE INSURANCE AGENTS, AND ADJUSTERS

(Formerly: Agents, brokers, solicitors, and adjusters)

Sections

48.17.010 Definitions.
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48.17.090 Application for license—Commissioner's findings.
48.17.110 Examination of applicants—Exemptions.
48.17.150 Continuing education courses and requirements—Rules.
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48.17.170 Insurance producers', title insurance agents', and adjusters' licenses—Authorized lines of authority—Definitions—Form and content of licenses. *(Effective until July 1, 2010.)*
48.17.170 Insurance producers', title insurance agents', and adjusters' licenses—Authorized lines of authority—Definitions—Form and content of licenses. *(Effective July 1, 2010.)*
48.17.173 Nonresident license request—Conditions for approval—Service of legal process.
48.17.250 Insurance producer's bond.

48.17.270 Insurance producer as insurer's agent—Compensation—Disclosure.
48.17.380 Adjusters—Application form—Qualifications for license—Bond.
48.17.430 Public adjuster's bond.
48.17.565 Insurance education providers—Violations—Costs awarded.
48.17.902 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. *(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*

48.17.010 Definitions. The definitions in this section apply throughout this title unless the context clearly requires otherwise.

(1) "Adjuster" means any person who, for compensation as an independent contractor or as an employee of an independent contractor, or for fee or commission, investigates or reports to the adjuster's principal relative to claims arising under insurance contracts, on behalf solely of either the insurer or the insured. An attorney-at-law who adjusts insurance losses from time to time incidental to the practice of his or her profession, or an adjuster of marine losses, or a salaried employee of an insurer or of a managing general agent, is not deemed to be an "adjuster" for the purpose of this chapter.

(a) "Independent adjuster" means an adjuster representing the interests of the insurer.

(b) "Public adjuster" means an adjuster employed by and representing solely the financial interests of the insured named in the policy.

(2) "Business entity" means a corporation, association, partnership, limited liability company, limited liability partnership, or other legal entity.

(3) "Home state" means the District of Columbia and any state or territory of the United States or province of Canada in which an insurance producer maintains the insurance producer's principal place of residence or principal place of business, and is licensed to act as an insurance producer.

(4) "Insurance education provider" means any insurer, health care service contractor, health maintenance organization, professional association, educational institution created by Washington statutes, or vocational school licensed under Title 28C RCW, or independent contractor to which the commissioner has granted authority to conduct and certify completion of a course satisfying the insurance education requirements of RCW 48.17.150.

(5) "Insurance producer" means a person required to be licensed under the laws of this state to sell, solicit, or negotiate insurance. "Insurance producer" does not include title insurance agents as defined in subsection (15) of this section or surplus line brokers licensed under chapter 48.15 RCW.

(6) "Insurer" has the same meaning as in RCW 48.01.050, and includes a health care service contractor as defined in RCW 48.44.010 and a health maintenance organization as defined in RCW 48.46.020.

(7) "License" means a document issued by the commissioner authorizing a person to act as an insurance producer or title insurance agent for the lines of authority specified in the document. The license itself does not create any authority, actual, apparent, or inherent, in the holder to represent or commit to an insurer.

(8) "Limited line credit insurance" includes credit life, credit disability, credit property, credit unemployment, involuntary unemployment, mortgage life, mortgage guaranty, mortgage disability, automobile dealer gap insurance, and any other form of insurance offered in connection with an extension of credit that is limited to partially or wholly extinguishing the credit obligation that the commissioner determines should be designated a form of limited line credit insurance.

(9) "NAIC" means national association of insurance commissioners.

(10) "Negotiate" means the act of conferring directly with, or offering advice directly to, a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms, or conditions of the contract, provided that the person engaged in that act either sells insurance or obtains insurance from insurers for purchasers.

(11) "Person" means an individual or a business entity.

(12) "Sell" means to exchange a contract of insurance by any means, for money or its equivalent, on behalf of an insurer.

(13) "Solicit" means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular insurer.

(14) "Terminate" means the cancellation of the relationship between an insurance producer and the insurer or the termination of an insurance producer's authority to transact insurance.

(15) "Title insurance agent" means a business entity licensed under the laws of this state and appointed by an authorized title insurance company to sell, solicit, or negotiate insurance on behalf of the title insurance company.

(16) "Uniform application" means the current version of the NAIC uniform application for individual insurance producers for resident and nonresident insurance producer licensing.

(17) "Uniform business entity application" means the current version of the NAIC uniform application for business entity insurance license or registration for resident and nonresident business entities. [2009 c 162 § 13; 2007 c 117 § 1; 1985 c 264 § 7; 1981 c 339 § 9; 1947 c 79 § .17.01; Rem. Supp. 1947 § 45.17.01.]

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

Effective date—2009 c 162: See note following RCW 48.03.020.

48.17.060 License required. A person shall not sell, solicit, or negotiate insurance in this state for any line or lines of insurance unless the person is licensed for that line of authority in accordance with this chapter. A person may not act as or hold himself or herself out to be an adjuster in this state unless licensed by the commissioner or otherwise authorized to act as an adjuster under this chapter. [2009 c 162 § 14; 2007 c 117 § 2; 2003 c 250 § 4; 1995 c 214 § 1; 1975 1st ex.s. c 266 § 7; 1955 c 303 § 9; 1947 c 79 § .17.06; Rem. Supp. 1947 § 45.17.06.]

Effective date—2009 c 162: See note following RCW 48.03.020.

Severability—2003 c 250: See note following RCW 48.01.080.

Severability—1975 1st ex.s. c 266: See note following RCW 48.01.010.

48.17.090 Application for license—Commissioner's findings. (1) An individual applying for a resident insurance

producer license shall make application to the commissioner on the uniform application and declare under penalty of refusal, suspension, or revocation of the license that the statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief. As a part of or in connection with the application, the individual applicant shall furnish information concerning the applicant's identity, including fingerprints for submission to the Washington state patrol, the federal bureau of investigation, and any governmental agency or entity authorized to receive this information for a state and national criminal history background check. If, in the process of verifying fingerprints, business records, or other information, the commissioner's office incurs fees or charges from another governmental agency or from a business firm, the amount of the fees or charges shall be paid to the commissioner's office by the applicant.

(2) Before approving the application, the commissioner shall find that the individual:

(a) Is at least eighteen years of age;

(b) Has not committed any act that is a ground for denial, suspension, or revocation set forth in RCW 48.17.530;

(c) Has completed a prelicensing course of study for the lines of authority for which the person has applied;

(d) Has paid the fees set forth in RCW 48.14.010; and

(e) Has successfully passed the examinations for the lines of authority for which the person has applied.

(3) A resident business entity acting as an insurance producer is required to obtain an insurance producer license. Application shall be made using the uniform business entity application, and the individual signing the application shall declare under penalty of refusal, suspension, or revocation of the license that the statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief. Before approving the application, the commissioner shall find that:

(a) The business entity has paid the fees set forth in RCW 48.14.010;

(b) The business entity has designated a licensed insurance producer responsible for the business entity's compliance with the insurance laws and rules of this state; and

(c) The business entity has not committed any act that is a ground for denial, suspension, or revocation set forth in RCW 48.17.530.

(4) A resident business entity acting as a title insurance agent is required to obtain a title insurance agent license. Application shall be made to the commissioner on the uniform business entity application, and the individual submitting the application shall declare under penalty of refusal, suspension, or revocation of the license that the statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief. Before approving the application, the commissioner shall find that the business entity:

(a) Has paid the fees set forth in RCW 48.14.010;

(b) Maintains a lawfully established place of business in this state;

(c) Is empowered to be a title insurance agent under a members' agreement, if a limited liability company, or by its articles of incorporation;

(d) Is appointed as an agent by one or more authorized title insurance companies; and

(e) Has complied with RCW 48.29.155 and 48.29.160.

(5) The commissioner may require any documents reasonably necessary to verify the information contained in an application and may, from time to time, require any licensed insurance producer or title insurance agent to produce the information called for in an application for license. [2009 c 162 § 15; 2007 c 117 § 7; 2002 c 227 § 2; 2001 c 56 § 1; 1982 c 181 § 6; 1981 c 339 § 10; 1967 c 150 § 15; 1947 c 79 § .17.09; Rem. Supp. 1947 § 45.17.09.]

Effective date—2009 c 162: See note following RCW 48.03.020.

Effective date—2002 c 227: See note following RCW 48.06.040.

Severability—1982 c 181: See note following RCW 48.03.010.

48.17.110 Examination of applicants—Exemptions. (1) A resident individual applying for an insurance producer license or an individual applying for an adjuster license shall pass a written examination unless exempt under this section or RCW 48.17.175. The examination shall test the knowledge of the individual concerning the lines of authority for which application is made, the duties and responsibilities of an insurance producer or adjuster, and the insurance laws and rules of this state. Examinations required by this section shall be developed and conducted under the rules prescribed by the commissioner. The commissioner shall prepare, or approve, and make available a manual specifying in general terms the subjects which may be covered in any examination for a particular license.

(2) The following are exempt from the examination requirement:

(a) Applicants for licenses under RCW 48.17.170(1) (g), (h), and (i), at the discretion of the commissioner;

(b) Applicants for an adjuster's license who for a period of one year, a portion of which was in the year next preceding the date of application, have been a full-time salaried employee of an insurer or of a managing general agent to adjust, investigate, or report claims arising under insurance contracts;

(c) Applicants for a license as a nonresident adjuster who are duly licensed in another state and who are deemed by the commissioner to be fully qualified and competent for a similar license in this state.

(3) The commissioner may make arrangements, including contracting with an outside testing service, for administering examinations.

(4) The commissioner may, at any time, require any licensed insurance producer or adjuster to take and successfully pass an examination testing the licensee's competence and qualifications as a condition to the continuance or renewal of a license, if the licensee has been guilty of violating this title, or has so conducted affairs under an insurance license as to cause the commissioner to reasonably desire further evidence of the licensee's qualifications. [2009 c 162 § 16; 2007 c 117 § 8; 1990 1st ex.s. c 3 § 2; 1977 ex.s. c 182 § 3; 1967 c 150 § 16; 1965 ex.s. c 70 § 19; 1963 c 195 § 17; 1955 c 303 § 10; 1949 c 190 § 23; 1947 c 79 § .17.11; Rem. Supp. 1949 § 45.17.11.]

Effective date—2009 c 162: See note following RCW 48.03.020.

48.17.150 Continuing education courses and requirements—Rules. (1) The commissioner shall by rule establish minimum continuing education requirements for the renewal or reissuance of a license to an insurance producer.

(2) The commissioner shall require that continuing education courses will be made available on a statewide basis in order to ensure that persons residing in all geographical areas of this state will have a reasonable opportunity to attend such courses.

(3) The continuing education requirements must be appropriate to the license for the lines of authority specified in RCW 48.17.170 or by rule. [2009 c 162 § 17; 2007 c 117 § 10; 2005 c 223 § 7; 1994 c 131 § 4; 1988 c 248 § 9; 1979 ex.s. c 269 § 7; 1971 ex.s. c 292 § 47; 1967 c 150 § 19; 1961 c 194 § 4; 1947 c 79 § .17.15; Rem. Supp. 1947 § 45.17.15.]

Effective date—2009 c 162: See note following RCW 48.03.020.

Effective date, implementation—1979 ex.s. c 269: See note following RCW 48.14.010.

Severability—1971 ex.s. c 292: See note following RCW 26.28.010.

48.17.160 Appointment of agents—Approval—Termination—Fees. (1) An insurance producer or title insurance agent shall not act as an agent of an insurer unless the insurance producer or title insurance agent becomes an appointed agent of that insurer. An insurance producer who is not acting as an agent of an insurer is not required to become appointed.

(2) To appoint an insurance producer or title insurance agent as its agent, the appointing insurer shall file, in a format approved by the commissioner, a notice of appointment within fifteen days from the date the agency contract is executed or the first insurance application is submitted, whichever is earlier.

(3) Upon receipt of the notice of appointment, the commissioner shall verify within a reasonable time, not to exceed thirty days, that the insurance producer or title insurance agent is eligible for appointment. If the insurance producer or title insurance agent is determined to be ineligible for appointment, the commissioner shall notify the insurer within ten days of the determination.

(4) An insurer shall pay an appointment fee, in the amount and method of payment set forth in RCW 48.14.010, for each insurance producer or title insurance agent appointed by the insurer.

(5) Contingent upon payment of the appointment renewal fee as set forth in RCW 48.14.010, an appointment shall be effective until terminated by the insurer, insurance producer, or title insurance agent and notice has been given to the commissioner as required by RCW 48.17.595. [2009 c 162 § 18; 2007 c 117 § 11; 1994 c 131 § 5; 1990 1st ex.s. c 3 § 3; 1979 ex.s. c 269 § 2; 1967 c 150 § 20; 1959 c 225 § 6; 1955 c 303 § 13; 1947 c 79 § .17.16; Rem. Supp. 1947 § 45.17.16.]

Effective date—2009 c 162: See note following RCW 48.03.020.

Effective date, implementation—1979 ex.s. c 269: See note following RCW 48.14.010.

48.17.170 Insurance producers', title insurance agents', and adjusters' licenses—Authorized lines of authority—Definitions—Form and content of licenses. ***(Effective until July 1, 2010.)*** (1) Unless denied licensure under RCW 48.17.530, persons who have met the requirements of RCW 48.17.090 and 48.17.110 shall be issued an insurance producer license. An insurance producer may receive a license in one or more of the following lines of authority:

(a) "Life," which is insurance coverage on human lives, including benefits of endowment and annuities, and may include benefits in the event of death or dismemberment by accident and benefits for disability income;

(b) "Disability," which is insurance coverage for accident, health, and disability or sickness, bodily injury, or accidental death, and may include benefits for disability income;

(c) "Property," which is insurance coverage for the direct or consequential loss or damage to property of every kind;

(d) "Casualty," which is insurance coverage against legal liability, including that for death, injury, or disability or damage to real or personal property;

(e) "Variable life and variable annuity products," which is insurance coverage provided under variable life insurance contracts, variable annuities, or any other life insurance or annuity product that reflects the investment experience of a separate account;

(f) "Personal lines," which is property and casualty insurance coverage sold to individuals and families for primarily noncommercial purposes;

(g) Limited lines:

(i) Surety;

(ii) Limited line credit insurance;

(iii) Travel;

(h) Specialty lines:

(i) Communications equipment or services;

(ii) Rental car; or

(i) Any other line of insurance permitted under state laws or rules.

(2) Unless denied licensure under RCW 48.17.530, persons who have met the requirements of RCW 48.17.090(4) shall be issued a title insurance agent license.

(3) All insurance producers', title insurance agents', and adjusters' licenses issued by the commissioner shall be valid for the time period established by the commissioner unless suspended or revoked at an earlier date.

(4) Subject to the right of the commissioner to suspend, revoke, or refuse to renew any insurance producer's, title insurance agent's, or adjuster's license as provided in this title, the license may be renewed into another like period by filing with the commissioner by any means acceptable to the commissioner on or before the expiration date a request, by or on behalf of the licensee, for such renewal accompanied by payment of the renewal fee as specified in RCW 48.14.010.

(5) If the request and fee for renewal of an insurance producer's, title insurance agent's, or adjuster's license are filed with the commissioner prior to expiration of the existing license, the licensee may continue to act under such license, unless sooner revoked or suspended, until the issuance of a renewal license, or until the expiration of fifteen days after the commissioner has refused to renew the license and has mailed notification of such refusal to the licensee. If the request and fee for the license renewal are not received by the expiration date, the authority conferred by the license ends on the expiration date.

(6) If the request for renewal of an insurance producer's, title insurance agent's, or adjuster's license and payment of the fee are not received by the commissioner prior to the expiration date, the applicant for renewal shall pay to the commissioner, in addition to the renewal fee, a surcharge as follows:

(a) For the first thirty days or part thereof of delinquency, the surcharge is fifty percent of the renewal fee;

(b) For the next thirty days or part thereof of delinquency, the surcharge is one hundred percent of the renewal fee.

(7) If the request for renewal of an insurance producer's, title insurance agent's, or adjuster's license and fee for the renewal are received by the commissioner after sixty days but prior to twelve months after the expiration date, the application is for reinstatement of the license and the applicant for reinstatement must pay to the commissioner the license fee and a surcharge of two hundred percent of the license fee.

(8) Subsections (6) and (7) of this section do not exempt any person from any penalty provided by law for transacting business without a valid and subsisting license or appointment.

(9) An individual insurance producer, title insurance agent, or adjuster who allows his or her license to lapse may, within twelve months after the expiration date, reinstate the same license without the necessity of passing a written examination.

(10) A licensed insurance producer who is unable to comply with license renewal procedures due to military service or some other extenuating circumstance such as a long-term medical disability, may request a waiver of those procedures. The producer may also request a waiver of any examination requirement or any other fine or sanction imposed for failure to comply with renewal procedures.

(11) The license shall contain the licensee's name, address, personal identification number, and the date of issuance, lines of authority, expiration date, and any other information the commissioner deems necessary.

(12) Licensees shall inform the commissioner by any means acceptable to the commissioner of a change of address within thirty days of the change. Failure to timely inform the commissioner of a change in legal name or address may result in a penalty under either RCW 48.17.530 or 48.17.560, or both. [2009 c 162 § 19; 2007 c 117 § 12; 1979 ex.s. c 269 § 3; 1947 c 79 § .17.17; Rem. Supp. 1947 § 45.17.17.]

Effective date—2009 c 162: See note following RCW 48.03.020.

Effective date, implementation—1979 ex.s. c 269: See note following RCW 48.14.010.

48.17.170 Insurance producers', title insurance agents', and adjusters' licenses—Authorized lines of authority—Definitions—Form and content of licenses. ***(Effective July 1, 2010.)*** (1) Unless denied licensure under RCW 48.17.530, persons who have met the requirements of RCW 48.17.090 and 48.17.110 shall be issued an insurance producer license. An insurance producer may receive a license in one or more of the following lines of authority:

(a) "Life," which is insurance coverage on human lives, including benefits of endowment and annuities, and may include benefits in the event of death or dismemberment by accident and benefits for disability income;

(b) "Disability," which is insurance coverage for accident, health, and disability or sickness, bodily injury, or accidental death, and may include benefits for disability income;

(c) "Property," which is insurance coverage for the direct or consequential loss or damage to property of every kind;

(d) "Casualty," which is insurance coverage against legal liability, including that for death, injury, or disability or damage to real or personal property;

(e) "Variable life and variable annuity products," which is insurance coverage provided under variable life insurance contracts, variable annuities, or any other life insurance or annuity product that reflects the investment experience of a separate account;

(f) "Personal lines," which is property and casualty insurance coverage sold to individuals and families for primarily noncommercial purposes;

(g) Limited lines:

(i) Surety;

(ii) Limited line credit insurance;

(iii) Travel;

(h) Specialty lines:

(i) Communications equipment or services;

(ii) Rental car;

(iii) Self-service storage; or

(i) Any other line of insurance permitted under state laws or rules.

(2) Unless denied licensure under RCW 48.17.530, persons who have met the requirements of RCW 48.17.090(4) shall be issued a title insurance agent license.

(3) All insurance producers', title insurance agents', and adjusters' licenses issued by the commissioner shall be valid for the time period established by the commissioner unless suspended or revoked at an earlier date.

(4) Subject to the right of the commissioner to suspend, revoke, or refuse to renew any insurance producer's, title insurance agent's, or adjuster's license as provided in this title, the license may be renewed into another like period by filing with the commissioner by any means acceptable to the commissioner on or before the expiration date a request, by or on behalf of the licensee, for such renewal accompanied by payment of the renewal fee as specified in RCW 48.14.010.

(5) If the request and fee for renewal of an insurance producer's, title insurance agent's, or adjuster's license are filed with the commissioner prior to expiration of the existing license, the licensee may continue to act under such license, unless sooner revoked or suspended, until the issuance of a renewal license, or until the expiration of fifteen days after the commissioner has refused to renew the license and has mailed notification of such refusal to the licensee. If the request and fee for the license renewal are not received by the expiration date, the authority conferred by the license ends on the expiration date.

(6) If the request for renewal of an insurance producer's, title insurance agent's, or adjuster's license and payment of the fee are not received by the commissioner prior to the expiration date, the applicant for renewal shall pay to the commissioner, in addition to the renewal fee, a surcharge as follows:

(a) For the first thirty days or part thereof of delinquency, the surcharge is fifty percent of the renewal fee;

(b) For the next thirty days or part thereof of delinquency, the surcharge is one hundred percent of the renewal fee.

(7) If the request for renewal of an insurance producer's, title insurance agent's, or adjuster's license and fee for the renewal are received by the commissioner after sixty days but prior to twelve months after the expiration date, the application is for reinstatement of the license and the applicant for reinstatement must pay to the commissioner the license fee and a surcharge of two hundred percent of the license fee.

(8) Subsections (6) and (7) of this section do not exempt any person from any penalty provided by law for transacting business without a valid and subsisting license or appointment.

(9) An individual insurance producer, title insurance agent, or adjuster who allows his or her license to lapse may, within twelve months after the expiration date, reinstate the same license without the necessity of passing a written examination.

(10) A licensed insurance producer who is unable to comply with license renewal procedures due to military service or some other extenuating circumstance such as a long-term medical disability, may request a waiver of those procedures. The producer may also request a waiver of any examination requirement or any other fine or sanction imposed for failure to comply with renewal procedures.

(11) The license shall contain the licensee's name, address, personal identification number, and the date of issuance, lines of authority, expiration date, and any other information the commissioner deems necessary.

(12) Licensees shall inform the commissioner by any means acceptable to the commissioner of a change of address within thirty days of the change. Failure to timely inform the commissioner of a change in legal name or address may result in a penalty under either RCW 48.17.530 or 48.17.560, or both. [2009 c 162 § 19; 2009 c 119 § 11; 2007 c 117 § 12; 1979 ex.s. c 269 § 3; 1947 c 79 § .17.17; Rem. Supp. 1947 § 45.17.17.]

Reviser's note: This section was amended by 2009 c 119 § 11 and by 2009 c 162 § 19, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2009 c 162: See note following RCW 48.03.020.

Effective date—2009 c 119: See RCW 48.170.900.

Effective date, implementation—1979 ex.s. c 269: See note following RCW 48.14.010.

48.17.173 Nonresident license request—Conditions for approval—Service of legal process. (1) Unless denied licensure under RCW 48.17.530, a nonresident person shall receive a nonresident producer license for the line or lines of authority under RCW 48.17.170 which is substantially equivalent to the line or lines of authority granted to the nonresident person in the person's home state if:

(a) The person is currently licensed as a resident and in good standing in the person's home state;

(b) The person has submitted the proper request for licensure and has paid the fees required by RCW 48.14.010;

(c) The person has submitted or transmitted to the commissioner a completed uniform application;

(d) The person's home state awards nonresident producer licenses to residents of this state on the same basis; and

(e) A business entity, it has designated an individual licensed insurance producer responsible for the business entity's compliance with the insurance laws and rules of this state.

(2) An individual, as part of the request for licensure, shall furnish information concerning the individual's identity, including fingerprints for submission to the Washington state patrol, the federal bureau of investigation, and any governmental agency or entity authorized to receive this information for a state and national criminal history background check. If, in the process of verifying fingerprints, business records, or other information, the commissioner's office incurs fees or charges from another governmental agency or from a business firm, the amount of the fees or charges shall be paid to the commissioner's office by the applicant.

(3) A nonresident business entity acting as a title insurance agent is required to obtain a title insurance agent license. Application shall be made to the commissioner on the uniform business entity application, and the individual submitting the application shall declare under penalty of refusal, suspension, or revocation of the license that the statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief. Before approving the application, the commissioner must find that the business entity:

(a) Has paid the fees set forth in RCW 48.14.010;

(b) Maintains a lawfully established place of business in its home state and holds a corresponding license issued by the state of its principal place of business, and has complied with the laws of this state governing the admission of foreign corporations;

(c) Is empowered to be a title agent under a members' agreement, if a limited liability company, or by its articles of incorporation;

(d) Is appointed as an agent by one or more authorized title insurance companies; and

(e) Has complied with RCW 48.29.155 and 48.29.160.

(4) The commissioner shall waive any license application requirements for a nonresident license applicant with a valid license from the applicant's home state, except the requirements imposed by this section, if the applicant's home state awards nonresident licenses to residents of this state on the same basis.

(5) A nonresident insurance producer's satisfaction of the nonresident insurance producer's home state's continuing education requirements for licensed insurance producers shall constitute satisfaction of this state's continuing education requirements if the nonresident producer's home state recognizes the satisfaction of its continuing education requirements imposed upon producers from this state on the same basis.

(6) The commissioner shall waive the requirement for providing fingerprints for submission to the Washington state patrol, the federal bureau of investigation, and any governmental agency or entity authorized to receive this information for a state and national criminal history background check, if the person possesses a valid insurance producer's or surplus line broker's license from the person's home state and the person's home state requires submission of information con-

cerning a person's identity, including fingerprints for the licensure of its resident insurance producers or surplus line brokers, respectively.

(7) The commissioner may verify the producer's licensing status through the producer database maintained by the NAIC, its affiliates, or subsidiaries.

(8) A nonresident producer who moves from one state to another state or a resident producer who moves from this state to another state shall file a change of address and provide certification from the new resident state within thirty days of the change of legal residence. No fee or license application is required.

(9) A person licensed as a limited line credit insurance or other type of limited lines producer in the person's home state and who complies with the requirements of subsection (1) of this section shall receive a nonresident limited lines producer license, under subsection (1) of this section, granting the same scope of authority as granted under the license issued by the producer's home state. For the purpose of this subsection, limited line insurance is any authority granted by the home state which restricts the authority of the license to the lines set out in RCW 48.17.170(1)(g).

(10) Each licensed nonresident insurance producer or title insurance agent shall appoint the commissioner as the insurance producer's or title insurance agent's attorney to receive service of legal process issued against the insurance producer or title insurance agent in this state upon causes of action arising within this state. Service upon the commissioner as attorney shall constitute effective legal service upon the insurance producer or title insurance agent.

(a) The appointment shall be irrevocable for as long as there could be any cause of action against the insurance producer or title insurance agent arising out of the insurance producer's or title insurance agent's insurance transactions in this state.

(b) Duplicate copies of such legal process against such insurance producer or title insurance agent shall be served upon the commissioner either by a person competent to serve a summons, or through registered mail. At the time of such service the plaintiff shall pay to the commissioner ten dollars, taxable as costs in the action.

(c) Upon receiving such service, the commissioner shall forthwith send one of the copies of the process, by registered mail with return receipt requested, to the defendant insurance producer or title insurance agent at the insurance producer's or title insurance agent's last address of record with the commissioner.

(d) The commissioner shall keep a record of the day and hour of service upon the commissioner of all such legal process. No proceedings shall be had against the defendant insurance producer or title insurance agent, and the defendant shall not be required to appear, plead, or answer until the expiration of forty days after the date of service upon the commissioner.

(11) The commissioner may require any documents reasonably necessary to verify the information contained in an application and may, from time to time, require any licensed insurance producer or title insurance agent to produce the information called for in an application for license. [2009 c 162 § 20; 2007 c 117 § 13.]

Effective date—2009 c 162: See note following RCW 48.03.020.

48.17.250 Insurance producer's bond. (1) Every insurance producer licensed under this chapter on or after July 1, 2009, who places insurance either directly or indirectly with an insurer with which the insurance producer is not appointed as an agent must maintain in force while so licensed a bond in favor of the people of the state of Washington or a named insured such that the people of Washington are covered by the bond, executed by an authorized corporate surety approved by the commissioner, in the amount of two thousand five hundred dollars, or five percent of the premiums brokered in the previous calendar year, whichever is greater, but not to exceed one hundred thousand dollars total aggregate liability. The bond may be continuous in form, and total aggregate liability on the bond may be limited to the required amount of the bond. The bond shall be contingent on the accounting by the insurance producer to any person requesting the insurance producer to obtain insurance, for moneys or premiums collected in connection therewith.

(2) Authorized insurance producers of a business entity may meet the requirements of this section with a bond in the name of the business entity, continuous in form, and in the amounts set forth in subsection (1) of this section. Insurance producers may meet the requirements of this section with a bond in the name of an association. The association must have been in existence for five years, have common membership, and have been formed for a purpose other than obtaining a bond. An individual insurance producer remains responsible for assuring that a bond is in effect and is for the correct amount.

(3) The surety may cancel the bond and be released from further liability thereunder upon thirty days' written notice in advance to the principal. The cancellation does not affect any liability incurred or accrued under the bond before the termination of the thirty-day period.

(4) The insurance producer's license may be revoked if the insurance producer acts without a bond that is required under this section.

(5) If a party injured under the terms of the bond requests the insurance producer to provide the name of the surety and the bond number, the insurance producer must provide the information within three working days after receiving the request.

(6) Members of an association may meet the requirements of this section with a bond in the name of the association that is continuous in form and in the amounts set forth in subsection (1) of this section for each participating member.

(7) All records relating to the bond required by this section shall be kept available and open to the inspection of the commissioner at any business time. [2009 c 162 § 21; 2007 c 117 § 16; 1979 ex.s. c 269 § 8; 1977 ex.s. c 182 § 4; 1947 c 79 § .17.25; Rem. Supp. 1947 § 45.17.25.]

Effective date—2009 c 162: See note following RCW 48.03.020.

Effective date, implementation—1979 ex.s. c 269: See note following RCW 48.14.010.

48.17.270 Insurance producer as insurer's agent—Compensation—Disclosure. (1) The sole relationship between an insurance producer and an insurer as to which the insurance producer is appointed as an agent shall, as to transactions arising during the existence of such agency appointment, be that of insurer and agent.

(2) Unless the agency-insurer agreement provides to the contrary, an insurance producer may receive the following compensation:

(a) A commission paid by the insurer;

(b) A fee paid by the insured; or

(c) A combination of commission paid by the insurer and a fee paid by the insured from which an insurance producer may offset or reimburse the insured for all or part of the fee.

(3) If the compensation received by an insurance producer who is dealing directly with the insured includes a fee, for each policy, the insurance producer must disclose in writing to the insured:

(a) The full amount of the fee paid by the insured;

(b) The full amount of any commission paid to the insurance producer by the insurer, if one is received;

(c) An explanation of any offset or reimbursement of fees or commissions as described in subsection (2)(c) of this section;

(d) When the insurance producer may receive additional commission, notice that states the insurance producer:

(i) May receive additional commission in the form of future incentive compensation from the insurer, including contingent commissions and other awards and bonuses based on factors that typically include the total sales volume, growth, profitability, and retention of business placed by the insurance producer with the insurer, and incentive compensation is only paid if the performance criteria established in the agency-insurer agreement is met by the insurance producer or the business entity with which the insurance producer is affiliated; and

(ii) Will furnish to the insured or prospective insured specific information relating to additional commission upon request; and

(e) The full name of the insurer that may pay any commission to the insurance producer.

(4) Written disclosure of compensation as required by subsection (3) of this section shall be provided by the insurance producer to the insured prior to the sale of the policy.

(5) Written disclosure as required by subsection (3) of this section must be signed by the insurance producer and the insured, and the writing must be retained by the insurance producer for five years. For the purposes of this section, written disclosure means the insured's written consent obtained prior to the insured's purchase of insurance. In the case of a purchase over the telephone or by electronic means for which written consent cannot be reasonably obtained, consent documented by the insurance producer shall be acceptable. [2009 c 162 § 22; 2007 c 117 § 17; 1994 c 203 § 1; 1993 c 455 § 1; 1981 c 339 § 13; 1947 c 79 § .17.27; Rem. Supp. 1947 § 45.17.27.]

Effective date—2009 c 162: See note following RCW 48.03.020.

48.17.380 Adjusters—Application form—Qualifications for license—Bond. (1) Application for a license to be an adjuster shall be made to the commissioner upon forms furnished by the commissioner. As a part of or in connection with the application, an individual applicant shall furnish information concerning his or her identity, including fingerprints for submission to the Washington state patrol, the federal bureau of investigation, and any governmental agency or entity authorized to receive this information for a state and national criminal history background check, personal history, experience, business record, purposes, and other pertinent facts, as the commissioner may reasonably require. If, in the process of verifying fingerprints, business records, or other information, the commissioner's office incurs fees or charges from another governmental agency or from a business firm, the amount of the fees or charges must be paid to the commissioner's office by the applicant.

(2) Any person willfully misrepresenting any fact required to be disclosed in any application shall be liable to penalties as provided by this code.

(3) The commissioner shall license as an adjuster only an individual or business entity which has otherwise complied with this code therefor and the individual or responsible officer of the business entity has furnished evidence satisfactory to the commissioner that the individual or responsible officer of the business entity is qualified as follows:

(a) Is eighteen or more years of age;

(b) Is a bona fide resident of this state, or is a resident of a state which will permit residents of this state to act as adjusters in such other state;

(c) Is a trustworthy person;

(d) Has had experience or special education or training with reference to the handling of loss claims under insurance contracts, of sufficient duration and extent reasonably to make the individual or responsible officer of the business entity competent to fulfill the responsibilities of an adjuster;

(e) Has successfully passed any examination as required under this chapter;

(f) If for a public adjuster's license, has filed the bond required by RCW 48.17.430.

(4) The commissioner may require any documents reasonably necessary to verify the information contained in an application and may, from time to time, require any licensed adjuster to produce the information called for in an application for a license. [2009 c 162 § 23; 2007 c 117 § 18; 1981 c 339 § 15; 1971 ex.s. c 292 § 48; 1947 c 79 § .17.38; Rem. Supp. 1947 § 45.17.38.]

Effective date—2009 c 162: See note following RCW 48.03.020.

Severability—1971 ex.s. c 292: See note following RCW 26.28.010.

48.17.430 Public adjuster's bond. (1) Prior to the issuance of a license as public adjuster, the applicant therefor shall file with the commissioner and shall thereafter maintain in force while so licensed a surety bond in favor of the people of the state of Washington, executed by an authorized corporate surety approved by the commissioner, in the amount of five thousand dollars. The bond may be continuous in form, and total aggregate liability on the bond may be limited to the payment of five thousand dollars. The bond shall be contingent on the accounting by the adjuster to any insured whose claim he or she is handling, for moneys or any settlement received in connection therewith.

(2) Any such bond shall remain in force until the surety is released from liability by the commissioner, or until canceled by the surety. Without prejudice to any liability accrued prior to cancellation, the surety may cancel a bond upon thirty days advance notice in writing filed with the commissioner.

(3) Such bond shall be required of any adjuster acting as a public adjuster as of the effective date of this code, or thereafter under any unexpired license heretofore issued. [2009 c 549 § 7063; 1977 ex.s. c 182 § 5; 1947 c 79 § .17.43; Rem. Supp. 1947 § 45.17.43.]

48.17.565 Insurance education providers—Violations—Costs awarded. If an investigation of any insurance education provider culminates in a finding by the commissioner or by any court of competent jurisdiction, that the insurance education provider has failed to comply with or has violated any statute or regulation pertaining to insurance education, the insurance education provider shall pay the expenses reasonably attributable and allocable to such investigation.

(1) The commissioner shall calculate such expenses and render a bill therefor by registered mail to the insurance education provider. Within thirty days after receipt of such bill, the insurance education provider shall pay the full amount to the commissioner. The commissioner shall transmit such payment to the state treasurer. The state treasurer shall credit the payment to the office of the insurance commissioner regulatory account, treating such payment as recovery of a prior expenditure.

(2) In any action brought under this section, if the commissioner prevails, the court may award to the office of the commissioner all costs of the action, including a reasonable attorneys' fee to be fixed by the court. [2009 c 162 § 24; 2007 c 117 § 30; 1989 c 323 § 4.]

Effective date—2009 c 162: See note following RCW 48.03.020.

Effective date—1989 c 323: See note following RCW 48.17.125.

48.17.902 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. ***(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 113.]

Chapter 48.18 RCW
THE INSURANCE CONTRACT

Sections

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48.18.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. *(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*

48.18.020 Power to contract. (1) Any person eighteen years or older shall be considered of full legal age and may contract for or with respect to insurance. Any person seventeen years or younger shall be considered a minor for purposes of Title 48 RCW.

(2) A minor not less than fifteen years of age as at nearest birthday may, notwithstanding such minority, contract for life or disability insurance on his or her own life or body, for his or her own benefit or for the benefit of his or her father, mother, spouse, child, brother, sister, or grandparent, and may exercise all rights and powers with respect to or under the contract as though of full legal age, and may surrender his or her interest therein and give a valid discharge for any benefit accruing or money payable thereunder. The minor shall not, by reason of his minority, be entitled to rescind, avoid, or repudiate the contract, or any exercise of a right or privilege thereunder, except, that such minor, not otherwise emancipated, shall not be bound by any unperformed agreement to pay, by promissory note or otherwise any premium on any such insurance contract. [2009 c 549 § 7064; 1973 1st ex.s. c 163 § 2; 1970 ex.s. c 17 § 4; 1947 c 79 § .18.02; Rem. Supp. 1947 § 45.18.02.]

48.18.050 Named insured—Interest insured. When the name of a person intended to be insured is specified in the policy, such insurance can be applied only to his or her own proper interest. This section shall not apply to life and disability insurances. [2009 c 549 § 7065; 1947 c 79 § .18.05; Rem. Supp. 1947 § 45.18.05.]

48.18.070 Alteration of application. (1) Any application for insurance in writing by the applicant shall be altered solely by the applicant or by his or her written consent, except that insertions may be made by the insurer for administrative purposes only in such manner as to indicate clearly that such insertions are not to be ascribed to the applicant. Violation of this provision shall be a misdemeanor.

(2) Any insurer issuing an insurance contract upon such an application unlawfully altered by its officer, employee, or agent shall not have available in any action arising out of such contract, any defense which is based upon the fact of such alteration, or as to any item in the application which was so altered. [2009 c 549 § 7066; 1947 c 79 § .18.07; Rem. Supp. 1947 § 45.18.07.]

48.18.090 Warranties and misrepresentations, effect of. (1) Except as provided in subsection (2) of this section, no oral or written misrepresentation or warranty made in the

negotiation of an insurance contract, by the insured or in his or her behalf, shall be deemed material or defeat or avoid the contract or prevent it attaching, unless the misrepresentation or warranty is made with the intent to deceive.

(2) In any application for life or disability insurance made in writing by the insured, all statements therein made by the insured shall, in the absence of fraud, be deemed representations and not warranties. The falsity of any such statement shall not bar the right to recovery under the contract unless such false statement was made with actual intent to deceive or unless it materially affected either the acceptance of the risk or the hazard assumed by the insurer. [2009 c 549 § 7067; 1947 c 79 § .18.09; Rem. Supp. 1947 § 45.18.09.]

48.18.120 Standard forms. (1) The commissioner shall, after hearing, from time to time promulgate such rules and regulations as may be necessary to define and effect reasonable uniformity in all basic contracts of fire insurance which are commonly known as the standard form fire policies and may be so referred to in this code, and the usual supplemental coverages, riders, or endorsements thereon or thereto, to the end that such definitions shall be applied in the construction of the various sections of this code wherein such terms are used and that there be a reasonable concurrency of contract where two or more insurers insure the same subject and risk. All such forms heretofore approved by the commissioner and for use as of immediately prior to the effective date of this code, may continue to be so used until the further order of the commissioner made pursuant to this subsection or pursuant to any other provision of this code.

(2) The commissioner may from time to time, after hearing, promulgate such rules and regulations as he or she deems necessary to establish reasonable minimum standard conditions and terminology for basic benefits to be provided by disability insurance contracts which are subject to chapters 48.20 and 48.21 RCW, for the purpose of expediting his or her approval of such contracts pursuant to this code. No such promulgation shall be inconsistent with standard provisions as required pursuant to RCW 48.18.130, nor contain requirements inconsistent with requirements relative to the same benefit provision as formulated or approved by the National Association of Insurance Commissioners. [2009 c 549 § 7068; 1957 c 193 § 10; 1947 c 79 § .18.12; Rem. Supp. 1947 § 45.18.12.]

48.18.130 Standard provisions. (1) Insurance contracts shall contain such standard provisions as are required by the applicable chapters of this code pertaining to contracts of particular kinds of insurance. The commissioner may waive the required use of a particular standard provision in a particular insurance contract form if

(a) he or she finds such provision unnecessary for the protection of the insured, and inconsistent with the purposes of the contract, and

(b) the contract is otherwise approved by him or her.

(2) No insurance contract shall contain any provision inconsistent with or contradictory to any such standard provision used or required to be used, but the commissioner may, except as to the standard provisions of individual disability insurance contracts as required under chapter 48.20 RCW, approve any provision which is in his or her opinion more favorable to the insured than the standard provision or optional standard provision otherwise required. No endorsement, rider, or other documents attached to such contract shall vary, extend, or in any respect conflict with any such standard provision, or with any modification thereof so approved by the commissioner as being more favorable to the insured.

(3) In lieu of the standard provisions required by this code for contracts for particular kinds of insurance, substantially similar standard provisions required by the law of a foreign or alien insurer's domicile may be used when approved by the commissioner. [2009 c 549 § 7069; 1947 c 79 § .18.13; Rem. Supp. 1947 § 45.18.13.]

Standard provisions
disability: Chapter 48.20 RCW.
group and blanket disability: Chapter 48.21 RCW.
group life and annuities: Chapter 48.24 RCW.
industrial life: Chapter 48.25 RCW.
life insurance and annuities: Chapter 48.23 RCW.

48.18.293 Nonliability of commissioner, agents, insurer for information giving reasons for cancellation or refusal to renew—Proof of mailing of notice. (1) There shall be no liability on the part of, and no cause of action of any nature shall arise against, the insurance commissioner, his or her agents, or members of his or her staff, or against any insurer, its authorized representative, its agents, its employees, or any firm, person or corporation furnishing to the insurer information as to reasons for cancellation or refusal to renew, for any statement made by any of them in any written notice of cancellation or refusal to renew, or in any other communications, oral or written, specifying the reasons for cancellation or refusal to renew or the providing of information pertaining thereto, or for statements made or evidence submitted in any hearing conducted in connection therewith.

(2) Proof of mailing of notice of cancellation or refusal to renew or of reasons for cancellation, to the named insured, at the latest address filed with the insurer by or on behalf of the named insured shall be sufficient proof of notice. [2009 c 549 § 7070; 1969 ex.s. c 241 § 21.]

Construction—1969 ex.s. c 241 §§ 19-25: See note following RCW 48.18.291.

48.18.340 Dividends payable to real party in interest. (1) Every insurer issuing participating policies, shall pay dividends, unused premium refunds or savings distributed on account of any such policy, only to the real party in interest entitled thereto as shown by the insurer's records, or to any person to whom the right thereto has been assigned in writing of record with the insurer, or given in the policy by such real party in interest.

(2) Any person who is shown by the insurer's records to have paid for his or her own account, or to have been ultimately charged for, the premium for insurance provided by a policy in which another person is the nominal insured, shall be deemed such real party in interest proportionate to premium so paid or so charged. This subsection shall not apply as to any such dividend, refund, or distribution which would amount to less than one dollar.

(3) This section shall not apply to contracts of group life insurance, group annuities, or group disability insurance. [2009 c 549 § 7071; 1947 c 79 § .18.34; Rem. Supp. 1947 § 45.18.34.]

48.18.375 Assignment of interests under group insurance policy. A person whose life is insured under a group insurance policy may, subject and pursuant to the terms of the policy, or pursuant to an arrangement between the insured, the group policyholder and the insurer, assign to any or all his or her spouse, children, parents, or a trust for the benefit of any or all of them, all or any part of his or her incidents of ownership, rights, title, and interests, both present and future, under such policy including specifically, but not by way of limitation, the right to designate a beneficiary or beneficiaries thereunder and the right to have an individual policy issued to him in case of termination of employment or of said group insurance policy. Such an assignment by the insured, made either before or after July 16, 1973, is valid for the purpose of vesting in the assignee, in accordance with any provisions included therein as to the time at which it is to be effective, all of such incidents of ownership, rights, title, and interests so assigned, but without prejudice to the insurer on account of any payment it may make or individual policy it may issue prior to receipt of notice of the assignment. This section acknowledges, declares, and codifies the existing right of assignment of interests under group insurance policies. [2009 c 549 § 7072; 1973 1st ex.s. c 163 § 3.]

48.18.400 Exemption of proceeds—Disability. The proceeds or avails of all contracts of disability insurance and of provisions providing benefits on account of the insured's disability which are supplemental to life insurance or annuity contracts heretofore or hereafter effected shall be exempt from all liability for any debt of the insured, and from any debt of the beneficiary existing at the time the proceeds are made available for his or her use. [2009 c 549 § 7073; 1947 c 79 § .18.40; Rem. Supp. 1947 § 45.18.40.]

48.18.410 Exemption of proceeds—Life. (1) The lawful beneficiary, assignee, or payee of a life insurance policy, other than an annuity, heretofore or hereafter effected by any person on his or her own life, or on the life of another, in favor of a person other than himself or herself, shall be entitled to the proceeds and avails of the policy against the creditors and representatives of the insured and of the person effecting the insurance, and such proceeds and avails shall also be exempt from all liability for any debt of such beneficiary, existing at the time the proceeds or avails are made available for his or her own use.

(2) The provisions of subsection (1) of this section shall apply

(a) whether or not the right to change the beneficiary is reserved or permitted in the policy; or

(b) whether or not the policy is made payable to the person whose life is insured or to his or her estate if the beneficiary, assignee or payee shall predecease such person; except, that this subsection shall not be construed so as to defeat any policy provision which provides for disposition of proceeds in the event the beneficiary shall predecease the insured.

(3) The exemptions provided by subsection (1) of this section, subject to the statute of limitations, shall not apply

(a) to any claim to or interest in such proceeds or avails by or on behalf of the insured, or the person so effecting the insurance, or their administrators or executors, in whatever capacity such claim is made or such interest is asserted; or

(b) to any claim to or interest in such proceeds or avails by or on behalf of any person to whom rights thereto have been transferred with intent to defraud creditors; but an insurer shall be liable to all such creditors only as to amounts aggregating not to exceed the amount of such proceeds or avails remaining in the insurer's possession at the time the insurer receives at its home office written notice by or on behalf of such creditors, of claims to recover for such transfer, with specification of the amounts claimed; or

(c) to so much of such proceeds or avails as equals the amount of any premiums or portion thereof paid for the insurance with intent to defraud creditors, with interest thereon, and if prior to the payment of such proceeds or avails the insurer has received at its home office written notice by or on behalf of the creditor, of a claim to recover for premiums paid with intent to defraud creditors, with specification of the amount claimed.

(4) For the purposes of subsection (1) of this section a policy shall also be deemed to be payable to a person other than the insured if and to the extent that a facility-of-payment clause or similar clause in the policy permits the insurer to discharge its obligation after the death of the individual insured by paying the death benefits to a person as permitted by such clause.

(5) No person shall be compelled to exercise any rights, powers, options or privileges under any such policy. [2009 c 549 § 7074; 1947 c 79 § .18.41; Rem. Supp. 1947 § 45.18.41.]

48.18.420 Exemption of proceeds—Group life. (1) A policy of group life insurance or the proceeds thereof payable to the individual insured or to the beneficiary thereunder, shall not be liable, either before or after payment, to be applied to any legal or equitable process to pay any liability of any person having a right under the policy. The proceeds thereof, when not made payable to a named beneficiary or to a third person pursuant to a facility-of-payment clause, shall not constitute a part of the estate of the individual insured for the payment of his or her debts.

(2) This section shall not apply to group life insurance policies issued under RCW 48.24.040 (debtor groups) to the extent that such proceeds are applied to payment of the obligation for the purpose of which the insurance was so issued. [2009 c 549 § 7075; 1947 c 79 § .18.42; Rem. Supp. 1947 § 45.18.42.]

48.18.440 Spouse's rights in life insurance policy. (1) Every life insurance policy heretofore or hereafter made payable to or for the benefit of the spouse of the insured, and every life insurance policy heretofore or hereafter assigned, transferred, or in any way made payable to a spouse or to a trustee for the benefit of a spouse, regardless of how such assignment or transfer is procured, shall, unless contrary to the terms of the policy, inure to the separate use and benefit

of such spouse: PROVIDED, That the beneficial interest of a spouse in a policy upon the life of a child of the spouses, however such interest is created, shall be deemed to be a community interest and not a separate interest, unless expressly otherwise provided by the policy.

(2) In any life insurance policy heretofore or hereafter issued upon the life of a spouse the designation heretofore or hereafter made by such spouse of a beneficiary in accordance with the terms of the policy, shall create a presumption that such beneficiary was so designated with the consent of the other spouse, but only as to any beneficiary who is the child, parent, brother, or sister of either of the spouses. The insurer may in good faith rely upon the representations made by the insured as to the relationship to him or her of any such beneficiary. [2009 c 549 § 7076; 1947 c 79 § .18.44; Rem. Supp. 1947 § 45.18.44.]

48.18.450 Life insurance payable to trustee named as beneficiary in the policy. Life insurance may be made payable to a trustee to be named as beneficiary in the policy and the proceeds of such insurance paid to such trustee shall be held and disposed of by the trustee as provided in a trust agreement or declaration of trust made by the insured during his or her lifetime. It shall not be necessary to the validity of any such trust agreement or declaration of trust that it have a trust corpus other than the right of the trustee to receive such insurance proceeds as beneficiary, and any such trustee may also receive assets, other than insurance proceeds, by testamentary disposition and administer them according to the terms of the trust agreement or declaration of trust as they exist at the death of the testator. [2009 c 549 § 7077; 1963 c 227 § 1.]

48.18.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. ***(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 114.]

Chapter 48.18A RCW

VARIABLE CONTRACT ACT

Sections

48.18A.020 Separate accounts authorized—Allocations—Benefits—Limitations—Valuation—Sale, transfer, or exchange of assets.

48.18A.020 Separate accounts authorized—Allocations—Benefits—Limitations—Valuation—Sale, transfer, or exchange of assets. A domestic life insurer may, by or pursuant to resolution of its board of directors, establish one or more separate accounts, and may allocate thereto amounts (including without limitation proceeds applied under optional modes of settlement or under dividend options) to provide for life insurance or annuities (and other benefits incidental thereto), payable in fixed or variable amounts or both, subject to the following:

(1) The income, gains, and losses, realized or unrealized, from assets allocated to a separate account shall be credited to or charged against the account, without regard to other income, gains, or losses of the insurer.

(2)(a) Except as hereinafter provided, amounts allocated to any separate account and accumulations thereon may be invested and reinvested without regard to any requirements or limitations prescribed by the laws of this state governing the investments of life insurers: PROVIDED, That to the extent that the insurer's reserve liability with regard to (i) benefits guaranteed as to dollar amount and duration, and (ii) funds guaranteed as to principal amount or stated rate of interest is maintained in any separate account, a portion of the assets of such separate account at least equal to such reserve liability shall be invested under such conditions as the commissioner may prescribe. The investments in such separate account or accounts shall not be taken into account in applying the investment limitations applicable to the investments of the insurer.

(b) With respect to seventy-five percent of the market value of the total assets in a separate account no insurer shall purchase or otherwise acquire the securities of any issuer, other than securities issued or guaranteed as to principal or interest by the United States, if immediately after such purchase or acquisition the market value of such investment, together with prior investments of such separate account in such security taken at market value, would exceed ten percent of the market value of the assets of such separate account: PROVIDED, That the commissioner may waive such limitation if, in his or her opinion, such waiver will not render the operation of such separate account hazardous to the public or the policyholders in this state.

(c) Unless otherwise permitted by law or approved by the commissioner, no insurer shall purchase or otherwise acquire for its separate accounts the voting securities of any issuer if as a result of such acquisition the insurer and its separate accounts, in the aggregate, will own more than ten percent of the total issued and outstanding voting securities of such issuer: PROVIDED, That the foregoing shall not apply with respect to securities held in separate accounts, the voting rights in which are exercisable only in accordance with instructions from persons having interests in such accounts.

(d) The limitations provided in paragraphs (b) and (c) of this subsection shall not apply to the investment with respect to a separate account in the securities of an investment company registered under the United States Investment Company Act of 1940: PROVIDED, That the investments of such investment company shall comply in substance therewith.

(3) Unless otherwise approved by the commissioner, assets allocated to a separate account shall be valued at their market value on the date of valuation, or if there is no readily

available market, then as provided under the terms of the contract or the rules or other written agreement applicable to such separate account: PROVIDED, That unless otherwise approved by the commissioner, the portion, if any, of the assets of such separate account equal to the insurer's reserve liability with regard to the guaranteed benefits and funds referred to in subsection (2) of this section shall be valued in accordance with the rules otherwise applicable to the insurer's assets.

(4) Amounts allocated to a separate account in the exercise of the power granted by this chapter shall be owned by the insurer and the insurer shall not be, nor hold itself out to be, a trustee with respect to such amounts. If and to the extent so provided under the applicable contracts, that portion of the assets of any such separate account equal to the reserves and other contract liabilities with respect to such account shall not be chargeable with liabilities arising out of any other business the insurer may conduct.

(5) No sale, exchange or other transfer of assets may be made by an insurer between any of its separate accounts or between any other investment account and one or more of its separate accounts unless, in case of a transfer into a separate account, such transfer is made solely to establish the account or to support the operation of the contracts with respect to the separate account to which the transfer is made, and unless such transfer, whether into or from a separate account, is made (a) by a transfer of cash, or (b) by a transfer of securities having a readily determinable market value: PROVIDED, That such transfer of securities is approved by the commissioner. The commissioner may approve other transfers among such accounts, if, in his or her opinion, such transfers would not be inequitable.

(6) To the extent such insurer deems it necessary to comply with any applicable federal or state law, such insurer, with respect to any separate account, including without limitation any separate account which is a management investment company or a unit investment trust, may provide for persons having interest therein, as may be appropriate, voting and other rights and special procedures for the conduct of the business of such account, including without limitation, special rights and procedures relating to investment policy, investment advisory services, selection of independent public accountants, and the selection of a committee, the members of which need not be otherwise affiliated with such insurer, to manage the business of such account. [2009 c 549 § 7078; 1973 1st ex.s. c 163 § 4; 1969 c 104 § 2.]

Chapter 48.19 RCW
RATES

Sections

48.19.080 Waiver of filing.
48.19.090 Excess rates on specific risks.
48.19.100 Disapproval of filing.
48.19.110 Disapproval of special filing.
48.19.120 Subsequent disapproval.
48.19.180 Issuance of license.
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48.19.220 Review of rules and refusal to admit insurers.
48.19.250 Cooperative activities.
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48.19.310 Complaints of insureds.
48.19.330 Requisites of advisory organization.
48.19.340 Desist orders.
48.19.350 Disqualification of data.
48.19.360 Joint underwriting or joint reinsurance.
48.19.370 Recording and reporting of loss and expense experience.
48.19.410 Examination of contracts.

48.19.080 Waiver of filing. Under such rules and regulations as he or she shall adopt the commissioner may, by order, suspend or modify the requirement of filing as to any kind of insurance. Such orders, rules and regulations shall be made known to insurers and rating organizations affected thereby. The commissioner may make such examination as he or she may deem advisable to ascertain whether any rates affected by such order meet the standard prescribed in RCW 48.19.020. [2009 c 549 § 7079; 1981 c 339 § 18; 1947 c 79 § .19.08; Rem. Supp. 1947 § 45.19.08.]

48.19.090 Excess rates on specific risks. Upon written application of the insured, stating his or her reasons therefor, filed with and approved by the commissioner, a rate in excess of that provided by a filing otherwise applicable may be used on any specific risk. [2009 c 549 § 7080; 1947 c 79 § .19.09; Rem. Supp. 1947 § 45.19.09.]

48.19.100 Disapproval of filing. If within the waiting period or any extension thereof as provided in RCW 48.19.060, the commissioner finds that a filing does not meet the requirements of this chapter, he or she shall disapprove such filing, and shall give notice of such disapproval, specifying the respect in which he or she finds the filing fails to meet such requirements, and stating that the filing shall not become effective, to the insurer or rating organization which made the filing. [2009 c 549 § 7081; 1989 c 25 § 6; 1947 c 79 § .19.10; Rem. Supp. 1947 § 45.19.10.]

Effective date—1989 c 25: See note following RCW 48.18.100.

48.19.110 Disapproval of special filing. (1) If within thirty days after a special filing subject to RCW 48.19.070 has become effective, the commissioner finds that the filing does not meet the requirements of this chapter, he or she shall disapprove the filing and shall give notice to the insurer or rating organization which made the filing, specifying in what respects he or she finds that the filing fails to meet such requirements and stating when, within a reasonable period thereafter, the filing shall be deemed no longer effective.

(2) Such disapproval shall not affect any contract made or issued prior to the expiration of the period set forth in the notice of disapproval. [2009 c 549 § 7082; 1947 c 79 § .19.11; Rem. Supp. 1947 § 45.19.11.]

48.19.120 Subsequent disapproval. (1) If at any time subsequent to the applicable review period provided in RCW 48.19.060 or 48.19.110, the commissioner finds that a filing does not meet the requirements of this chapter, he or she shall, after a hearing, notice of which was given to every insurer and rating organization which made such filing, issue his or her order specifying in what respect he or she finds that such filing fails to meet the requirements of this chapter, and stating when, within a reasonable period thereafter, the filings shall be deemed no longer effective.

(2) Such order shall not affect any contract or policy made or issued prior to the expiration of the period set forth in the order.

(3) Any person aggrieved with respect to any filing then in effect, other than the insurer or rating organization which made the filing, may make written application to the commissioner for a hearing thereon. The application shall specify the grounds to be relied upon by the applicant. If the commissioner finds that the application is made in good faith, that the applicant would be so aggrieved if his or her grounds are established, and that such grounds otherwise justify holding the hearing, he or she shall, within thirty days after receipt of the application, hold a hearing as required in subsection (1) of this section. [2009 c 549 § 7083; 1989 c 25 § 7; 1983 1st ex.s. c 32 § 15; 1947 c 79 § .19.12; Rem. Supp. 1947 § 45.19.12.]

Effective date—1989 c 25: See note following RCW 48.18.100.

48.19.180 Issuance of license. (1) If the commissioner finds that the applicant for a license as a rating organization is competent, trustworthy and otherwise qualified so to act, and that its constitution, articles of agreement or association or certificate of incorporation or trust agreement, and its bylaws, rules and regulations governing the conduct of its business conform to the requirements of law, he or she shall, upon payment of a license fee of twenty-five dollars, issue a license specifying the kinds of insurance, or subdivisions or class of risk or part or combination thereof for which the applicant is authorized to act as a rating organization.

(2) The commissioner shall grant or deny in whole or in part every such application within sixty days of the date of its filing with him or her.

(3) A license issued pursuant to this section shall remain in effect for three years unless sooner suspended or revoked by the commissioner. [2009 c 549 § 7084; 1947 c 79 § .19.18; Rem. Supp. 1947 § 45.19.18.]

48.19.190 Suspension or revocation of license. (1) The commissioner may, after a hearing, suspend or revoke the license issued to a rating organization for any of the following causes:

(a) If he or she finds that the licensee no longer meets the qualifications for the license.

(b) For failure to comply with an order of the commissioner within the time limited by the order, or any extension thereof which the commissioner may grant.

(2) The commissioner shall not so suspend or revoke a license for failure to comply with an order until the time prescribed by this code for an appeal from such order to the superior court has expired or if such appeal has been taken, until such order has been affirmed.

(3) The commissioner may determine when a suspension or revocation of license shall become effective. A suspension of license shall remain in effect for the period fixed by him or her, unless he or she modifies or rescinds the suspension, or until the order, failure to comply with which constituted grounds for the suspension, is modified, rescinded or reversed. [2009 c 549 § 7085; 1947 c 79 § .19.19; Rem. Supp. 1947 § 45.19.19.]

48.19.220 Review of rules and refusal to admit insurers. (1) The reasonableness of any rule or regulation in its application to subscribers, or the refusal of any rating organization to admit an insurer as a subscriber, shall, at the request of any subscriber or any such insurer, be reviewed by the commissioner at a hearing held upon notice to the rating organization, and to the subscriber or insurer.

(2) If the commissioner finds that such rule or regulation is unreasonable in its application to subscribers, he or she shall order that such rule or regulation shall not be applicable to subscribers who are not members of the rating organization.

(3) If a rating organization fails to grant or reject an insurer's application for subscribership within thirty days after it was made, the insurer may request a review by the commissioner as if the application had been rejected. If the commissioner finds that the insurer has been refused admittance to the rating organization as a subscriber without justification, he or she shall order the rating organization to admit the insurer as a subscriber. If he or she finds that the action of the rating organization was justified, he or she shall make an order affirming its action. [2009 c 549 § 7086; 1947 c 79 § .19.22; Rem. Supp. 1947 § 45.19.22.]

48.19.250 Cooperative activities. (1) Cooperation among rating organizations or among rating organizations and insurers in rate making or in other matters within the scope of this chapter is hereby authorized, if the filings resulting from such cooperation are subject to all the provisions of this chapter which are applicable to filings generally.

(2) The commissioner may review such cooperative activities and practices and if, after a hearing, he or she finds that any such activity or practice is unfair or unreasonable or otherwise inconsistent with the provisions of this code, he or she may issue a written order specifying in what respect such activity or practice is so unfair, unreasonable, or inconsistent, and requiring the discontinuance of such activity or practice. [2009 c 549 § 7087; 1947 c 79 § .19.25; Rem. Supp. 1947 § 45.19.25.]

48.19.290 Appeal from rating organization's action. (1) Any subscriber to a rating organization may appeal to the commissioner from the rating organization's action or decision in approving or rejecting any proposed change in or addition to the rating organization's filings. The commissioner shall, after a hearing on the appeal:

(a) Issue an order approving the rating organization's action or decision or directing it to give further consideration to such proposal; or

(b) If the appeal is from the rating organization's action or decision in rejecting a proposed addition to its filings, he or she may, in event he or she finds that the action or decision was unreasonable, issue an order directing the rating organization to make an addition to its filings, on behalf of its subscribers, in a manner consistent with his or her findings, within a reasonable time after the issuance of such order.

(2) If such appeal is based upon the rating organization's failure to make a filing on behalf of such subscriber which is based on a system of expense provisions which differs, in accordance with the right granted in subdivision (2) of RCW 48.19.030, from the system of expense provisions included in

a filing made by the rating organization, the commissioner shall, if he or she grants the appeal, order the rating organization to make the requested filing for use by the appellant. In deciding the appeal the commissioner shall apply the standards set forth in RCW 48.19.020 and 48.19.030. [2009 c 549 § 7088; 1947 c 79 § .19.29; Rem. Supp. 1947 § 45.19.29.]

48.19.310 Complaints of insureds. Every rating organization and every insurer which makes its own rates shall provide within this state reasonable means whereby any person aggrieved by the application of its rating system may be heard, in person or by his or her authorized representative, on his or her written request to review the manner in which such rating system has been applied in connection with the insurance afforded him or her. If the rating organization or insurer fails to grant or reject such request within thirty days after it is made, the applicant may proceed in the same manner as if his or her application had been rejected. Any party affected by the action of such rating organization or such insurer on such request may, within thirty days after written notice of such action, appeal to the commissioner, who, after a hearing held upon notice to the appellant and to the rating organization or insurer, may affirm or reverse such action. [2009 c 549 § 7089; 1947 c 79 § .19.31; Rem. Supp. 1947 § 45.19.31.]

48.19.330 Requisites of advisory organization. Every advisory organization before serving as such to any rating organization or independently filing insurer doing business in this state, shall file with the commissioner:

(1) A copy of its constitution, its articles of agreement or association or its certificate of incorporation and of its bylaws, rules and regulations governing its activities;

(2) A list of its members;

(3) The name and address of a resident of this state upon whom notices or orders of the commissioner or process issued at his or her direction may be served; and

(4) An agreement that the commissioner may examine such advisory organization in accordance with the provisions of RCW 48.03.010. [2009 c 549 § 7090; 1947 c 79 § .19.33; Rem. Supp. 1947 § 45.19.33.]

48.19.340 Desist orders. If, after a hearing, the commissioner finds that the furnishing of information or assistance by an advisory organization, as referred to in RCW 48.19.320, involves any act or practice which is unfair or unreasonable or otherwise inconsistent with the provisions of this code, he or she may issue a written order specifying in what respect such act or practice is unfair or unreasonable or so otherwise inconsistent, and requiring the discontinuance of such act or practice. [2009 c 549 § 7091; 1947 c 79 § .19.34; Rem. Supp. 1947 § 45.19.34.]

48.19.350 Disqualification of data. No insurer which makes its own filing nor any rating organization shall support its filings by statistics or adopt rate making recommendations, furnished to it by an advisory organization which has not complied with this chapter or with any order of the commissioner involving such statistics or recommendations issued under RCW 48.19.340. If the commissioner finds such insurer or rating organization to be in violation of this section he or she may issue an order requiring the discontinuance of the violation. [2009 c 549 § 7092; 1947 c 79 § .19.35; Rem. Supp. 1947 § 45.19.35.]

48.19.360 Joint underwriting or joint reinsurance. (1) Every group, association or other organization of insurers which engages in joint underwriting or joint reinsurance, shall be subject to regulation with respect thereto as is provided in this section, subject, however, with respect to joint underwriting, to all other provisions of this chapter, and, with respect to joint reinsurance, to RCW 48.19.270, 48.01.080 and 48.19.430; and to chapter 48.03 RCW of this code.

(2) If, after a hearing, the commissioner finds that any activity or practice of any such group, association or other organization is unfair or unreasonable or otherwise inconsistent with the provisions of this chapter, he or she may issue a written order specifying in what respects such activity or practice is unfair, or unreasonable or so inconsistent, and requiring the discontinuance of the activity or practice. [2009 c 549 § 7093; 1947 c 79 § .19.36; Rem. Supp. 1947 § 45.19.36.]

48.19.370 Recording and reporting of loss and expense experience. (1) The commissioner shall promulgate reasonable rules and statistical plans, reasonably adapted to each of the rating systems on file with him or her, which may be modified from time to time and which shall be used thereafter by each insurer in the recording and reporting of its loss and countrywide expense experience, in order that the experience of all insurers may be made available at least annually in such form and detail as may be necessary to aid him or her in determining whether rating systems comply with the standards set forth in RCW 48.19.020 and 48.19.030. Such rules and plans may also provide for the recording and reporting of expense experience items which are specially applicable to this state and are not susceptible of determination by a prorating of countrywide expense experience.

(2) In promulgating such rules and plans, the commissioner shall give due consideration to the rating systems on file with him or her and, in order that such rules and plans may be as uniform as is practicable among the several states, to the rules and to the form of the plans used for such rating systems in other states.

(3) No insurer shall be required to record or report its loss experience on a classification basis that is inconsistent with the rating system filed by it.

(4) The commissioner may designate one or more rating organizations or other agencies to assist him or her in gathering such experience and making compilations thereof, and such compilations shall be made available, subject to reasonable rules promulgated by the commissioner, to insurers and rating organizations.

(5) Reasonable rules and plans may be promulgated by the commissioner for the interchange of data necessary for the application of rating plans. [2009 c 549 § 7094; 1947 c 79 § .19.37; Rem. Supp. 1947 § 45.19.37.]

48.19.410 Examination of contracts. (1) The commissioner may permit the organization and operation of examining bureaus for the examination of policies, daily reports, binders, renewal certificates, endorsements, and other evidences of insurance or of the cancellation thereof, for the purpose of ascertaining that lawful rates are being charged.

(2) A bureau shall examine documents with regard to such kinds of insurance as the commissioner may, after hearing, reasonably require to be submitted for examination. A bureau may examine documents as to such other kinds of insurance as the issuing insurers may voluntarily submit for examination. Upon request of the commissioner, a bureau shall also examine affidavits filed pursuant to RCW 48.15.040, surplus lines contracts and related documents, and shall make recommendations to the commissioner to assist the commissioner in determining whether surplus lines have been procured in accordance with chapter 48.15 RCW and rules issued thereunder.

(3) No bureau shall operate unless licensed by the commissioner as to the kinds of insurance as to which it is permitted so to examine. To qualify for a license a bureau shall:

(a) Be owned in trust for the benefit of all the insurers regularly using its services, under a trust agreement approved by the commissioner.

(b) Make its services available without discrimination to all authorized insurers applying therefor, subject to such reasonable rules and regulations as to the obligations of insurers using its services, as to the conduct of its affairs, and as to the correction of errors and omissions in documents examined by it as are approved by the commissioner.

(c) Have no manager or other employee who is an employee of an insurer other than to the extent that he or she is an employee of the bureau owned by insurers through such trust agreement.

(d) Pay to the commissioner a fee of ten dollars for issuance of its license.

(4) Such license shall be of indefinite duration and shall remain in force until revoked by the commissioner or terminated at the request of the bureau. The commissioner may revoke the license, after hearing,

(a) if the bureau is no longer qualified therefor;

(b) if the bureau fails to comply with a proper order of the commissioner;

(c) if the bureau violates or knowingly participates in the violation of any provision of this code.

(5) Any person aggrieved by any rule, regulation, act or omission of a bureau may appeal to the commissioner therefrom. The commissioner shall hold a hearing upon such appeal, and shall make such order upon the hearing as he or she deems to be proper.

(6) Every such bureau operating in this state shall be subject to the supervision of the commissioner, and the commissioner shall examine it as provided in chapter 48.03 RCW of this code.

(7) Every examining bureau shall keep adequate records of the outstanding errors and omissions found in coverages examined by it and of its receipts and disbursements, and shall hold as confidential all information contained in documents submitted to it for examination.

(8) The commissioner shall not license an additional bureau for the examination of documents relative to a kind of insurance if such documents are being examined by a then existing licensed bureau. Any examining bureau operating in this state immediately prior to the effective date of this code under any law of this state repealed as of such date, shall have prior right to apply for and secure a license under this section. [2009 c 549 § 7095; 1983 1st ex.s. c 32 § 8; 1947 c 79 § .19.41; Rem. Supp. 1947 § 45.19.41.]

Chapter 48.20 RCW
DISABILITY INSURANCE

Sections

48.20.062 Standard provision No. 4—Grace period.
48.20.082 Standard provision No. 6—Notice of claim.
48.20.172 Optional standard provision No. 14—Change of occupation.
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48.20.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. *(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*

48.20.062 Standard provision No. 4—Grace period. There shall be a provision as follows:

GRACE PERIOD: A grace period of . . . . (insert a number not less than "7" for weekly premium policies, "10" for monthly premium policies, and "31" for all other policies) days will be granted for the payment of each premium falling due after the first premium, during which grace period the policy shall continue in force.

(A policy which contains a cancellation provision may add, at the end of the above provision: "subject to the right of the insurer to cancel in accordance with the cancellation provision hereof."

A policy in which the insurer reserves the right to refuse any renewal shall have, at the beginning of the above provision: "Unless not less than five days prior to the premium due date the insurer has delivered to the insured or has mailed to his or her last address as shown by the records of the insurer written notice of its intention not to renew this policy beyond the period for which the premium has been accepted.") [2009 c 549 § 7096; 1951 c 229 § 7.]

48.20.082 Standard provision No. 6—Notice of claim. There shall be a provision as follows:

NOTICE OF CLAIM: Written notice of claim must be given to the insurer within twenty days after the occurrence or commencement of any loss covered by the policy, or as soon thereafter as is reasonably possible. Notice given by or on behalf of the insured or the beneficiary to the insurer at . . . . . (insert the location of such office as the insurer may designate for the purpose), or to any authorized agent of the insurer, with information sufficient to identify the insured, shall be deemed notice to the insurer.

(In a policy providing a loss-of-time benefit which may be payable for at least two years, an insurer may at its option insert the following between the first and second sentences of the above provision:

"Subject to the qualifications set forth below, if the insured suffers loss of time on account of disability for which

indemnity may be payable for at least two years, he or she shall at least once in every six months after having given notice of claim, give to the insurer notice of continuance of said disability, except in the event of legal incapacity. The period of six months following any filing of proof by the insured or any payment by the insurer on account of such claim or any denial of liability in whole or in part by the insurer shall be excluded in applying this provision. Delay in the giving of such notice shall not impair the insured's right to any indemnity which would otherwise have accrued during the period of six months preceding the date on which such notice is actually given.") [2009 c 549 § 7097; 1951 c 229 § 9. Prior law: 1947 c 79 § .20.08; Rem. Supp. 1947 § 45.20.08.]

48.20.172 Optional standard provision No. 14—Change of occupation. There may be a provision as follows:

CHANGE OF OCCUPATION: If the insured be injured or contract sickness after having changed his occupation to one classified by the insurer as more hazardous than that stated in this policy or while doing for compensation anything pertaining to an occupation so classified, the insurer will pay only such portion of the indemnities provided in this policy as the premium paid would have purchased at the rates and within the limits fixed by the insurer for such more hazardous occupation. If the insured changes his or her occupation to one classified by the insurer as less hazardous than that stated in this policy, the insurer, upon receipt of proof of such change of occupation, will reduce the premium rate accordingly, and will return the excess pro rata unearned premium from the date of change of occupation or from the policy anniversary date immediately preceding receipt of such proof, whichever is the more recent. In applying this provision, the classification of occupational risk and the premium rates shall be such as have been last filed by the insurer prior to the occurrence of the loss for which the insurer is liable or prior to date of proof of change in occupation with the state official having supervision of insurance in the state where the insured resided at the time this policy was issued; but if such filing was not required, then the classification of occupational risk and the premium rates shall be those last made effective by the insurer in such state prior to the occurrence of the loss or prior to the date of proof of change in occupation. [2009 c 549 § 7098; 1951 c 229 § 18.]

48.20.192 Optional standard provision No. 15—Other insurance in this insurer. There may be a provision as follows:

OTHER INSURANCE IN THIS INSURER: If an accident or sickness or accident and sickness policy or policies previously issued by the insurer to the insured be in force concurrently herewith, making the aggregate indemnity for . . . . . (insert type of coverage or coverages) in excess of $. . . . . (insert maximum limit of indemnity or indemnities) the excess insurance shall be void and all premiums paid for such excess shall be returned to the insured or to his estate.

Or, in lieu thereof:

Insurance effective at any one time on the insured under a like policy or policies in this insurer is limited to the one such policy elected by the insured, his or her beneficiary or his estate, as the case may be, and the insurer will return all premiums paid for all other such policies. [2009 c 549 § 7099; 1951 c 229 § 20. Prior: 1947 c 79 § .20.24; Rem. Supp. 1947 § 45.20.24.]

48.20.222 Optional standard provision No. 18—Relation of earnings to insurance. (1) There may be a provision as follows:

RELATION OF EARNINGS TO INSURANCE: If the total monthly amount of loss of time benefits promised for the same loss under all valid loss of time coverage upon the insured, whether payable on a weekly or monthly basis, shall exceed the monthly earnings of the insured at the time disability commenced or his or her average monthly earnings for the period of two years immediately preceding a disability for which claim is made, whichever is the greater, the insurer will be liable only for such proportionate amount of such benefits under this policy as the amount of such monthly earnings of the insured bears to the total amount of monthly benefits for the same loss under all such coverage upon the insured at the time such disability commences and for the return of such part of the premiums paid during such two years as shall exceed the pro rata amount of the premiums for the benefits actually paid hereunder; but this shall not operate to reduce the total monthly amount of benefits payable under all such coverage upon the insured below the sum of two hundred dollars or the sum of the monthly benefits specified in such coverages, whichever is the lesser, nor shall it operate to reduce benefits other than those payable for loss of time.

(2) The foregoing policy provision may be inserted only in a policy which the insured has the right to continue in force subject to its terms by the timely payment of premiums (a) until at least age 50 or, (b) in the case of a policy issued after age 44, for at least five years from its date of issue. The insurer may, at its option, include in this provision a definition of "valid loss of time coverage," approved as to form by the commissioner, which definition shall be limited in subject matter to coverage provided by governmental agencies or by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada, or to any other coverage the inclusion of which may be approved by the commissioner or any combination of such coverages. In the absence of such definition such term shall not include any coverage provided for such insured pursuant to any compulsory benefit statute (including any workers' compensation or employer's liability statute), or benefits provided by union welfare plans or by employer or employee benefit organizations. [2009 c 549 § 7100; 1987 c 185 § 28; 1951 c 229 § 23.]

Intent—Severability—1987 c 185: See notes following RCW 51.12.130.

48.20.242 Optional standard provision No. 20—Cancellation. There may be a provision as follows:

CANCELLATION: The insurer may cancel this policy at any time by written notice delivered to the insured, or mailed to his or her last address as shown by the records of the insurer, stating when, not less than five days thereafter, such cancellation shall be effective; and after the policy has been continued beyond its original term the insured may can-

cel this policy at any time by written notice delivered or mailed to the insurer, effective upon receipt or on such later date as may be specified in such notice. In the event of cancellation, the insurer will return promptly the unearned portion of any premium paid. If the insured cancels, the earned premium shall be computed by the use of the short-rate table last filed with the state official having supervision of insurance in the state where the insured resided when the policy was issued. If the insurer cancels, the earned premium shall be computed pro rata. Cancellation shall be without prejudice to any claim originating prior to the effective date of cancellation. [2009 c 549 § 7101; 1951 c 229 § 25. Prior: 1947 c 79 § .20.21; Rem. Supp. 1947 § 45.20.21.]

48.20.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. ***(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 115.]

Chapter 48.21 RCW
GROUP AND BLANKET DISABILITY INSURANCE

Sections

48.21.045 Health plan benefits for small employers—Coverage—Exemption from statutory requirements—Premium rates—Requirements for providing coverage for small employers—Definitions.
48.21.060 The contract—Representations.
48.21.110 Payment of benefits.
48.21.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. *(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*

48.21.045 Health plan benefits for small employers—Coverage—Exemption from statutory requirements—Premium rates—Requirements for providing coverage for small employers—Definitions. (1)(a) An insurer offering any health benefit plan to a small employer, either directly or through an association or member-governed group formed specifically for the purpose of purchasing health care, may offer and actively market to the small employer a health benefit plan featuring a limited schedule of covered health care services. Nothing in this subsection shall preclude an insurer from offering, or a small employer from purchasing, other health benefit plans that may have more comprehensive benefits than those included in the product offered under this subsection. An insurer offering a health benefit plan under this subsection shall clearly disclose all covered benefits to the small employer in a brochure filed with the commissioner.

(b) A health benefit plan offered under this subsection shall provide coverage for hospital expenses and services rendered by a physician licensed under chapter 18.57 or 18.71 RCW but is not subject to the requirements of RCW 48.21.130, 48.21.140, 48.21.141, 48.21.142, 48.21.144, 48.21.146, 48.21.160 through 48.21.197, 48.21.200, 48.21.220, 48.21.225, 48.21.230, 48.21.235, 48.21.244, 48.21.250, 48.21.300, 48.21.310, or 48.21.320.

(2) Nothing in this section shall prohibit an insurer from offering, or a purchaser from seeking, health benefit plans with benefits in excess of the health benefit plan offered under subsection (1) of this section. All forms, policies, and contracts shall be submitted for approval to the commissioner, and the rates of any plan offered under this section shall be reasonable in relation to the benefits thereto.

(3) Premium rates for health benefit plans for small employers as defined in this section shall be subject to the following provisions:

(a) The insurer shall develop its rates based on an adjusted community rate and may only vary the adjusted community rate for:

(i) Geographic area;

(ii) Family size;

(iii) Age; and

(iv) Wellness activities.

(b) The adjustment for age in (a)(iii) of this subsection may not use age brackets smaller than five-year increments, which shall begin with age twenty and end with age sixty-five. Employees under the age of twenty shall be treated as those age twenty.

(c) The insurer shall be permitted to develop separate rates for individuals age sixty-five or older for coverage for which medicare is the primary payer and coverage for which medicare is not the primary payer. Both rates shall be subject to the requirements of this subsection (3).

(d) The permitted rates for any age group shall be no more than four hundred twenty-five percent of the lowest rate for all age groups on January 1, 1996, four hundred percent on January 1, 1997, and three hundred seventy-five percent on January 1, 2000, and thereafter.

(e) A discount for wellness activities shall be permitted to reflect actuarially justified differences in utilization or cost attributed to such programs. Up to a twenty percent variance may be allowed for small employers that develop and implement a wellness program or activities that directly improve employee wellness. Employers shall document program activities with the carrier and may, after three years of implementation, request a reduction in premiums based on improved employee health and wellness. While carriers may review the employer's claim history when making a determination regarding whether the employer's wellness program has improved employee health, the carrier may not use maternity or prevention services claims to deny the employer's request. Carriers may consider issues such as improved productivity or a reduction in absenteeism due to illness if submitted by the employer for consideration. Interested employers may also work with the carrier to develop a wellness program and a means to track improved employee health.

(f) The rate charged for a health benefit plan offered under this section may not be adjusted more frequently than annually except that the premium may be changed to reflect:

(i) Changes to the enrollment of the small employer;

(ii) Changes to the family composition of the employee;

(iii) Changes to the health benefit plan requested by the small employer; or

(iv) Changes in government requirements affecting the health benefit plan.

(g) Rating factors shall produce premiums for identical groups that differ only by the amounts attributable to plan design, with the exception of discounts for health improvement programs.

(h) For the purposes of this section, a health benefit plan that contains a restricted network provision shall not be considered similar coverage to a health benefit plan that does not contain such a provision, provided that the restrictions of benefits to network providers result in substantial differences in claims costs. A carrier may develop its rates based on claims costs due to network provider reimbursement schedules or type of network. This subsection does not restrict or enhance the portability of benefits as provided in RCW 48.43.015.

(i) Adjusted community rates established under this section shall pool the medical experience of all small groups purchasing coverage, including the small group participants in the health insurance partnership established in RCW 70.47A.030. However, annual rate adjustments for each small group health benefit plan may vary by up to plus or minus four percentage points from the overall adjustment of a carrier's entire small group pool, such overall adjustment to be approved by the commissioner, upon a showing by the carrier, certified by a member of the American academy of actuaries that: (i) The variation is a result of deductible leverage, benefit design, or provider network characteristics; and (ii) for a rate renewal period, the projected weighted average of all small group benefit plans will have a revenue neutral effect on the carrier's small group pool. Variations of greater than four percentage points are subject to review by the commissioner, and must be approved or denied within sixty days of submittal. A variation that is not denied within sixty days shall be deemed approved. The commissioner must provide to the carrier a detailed actuarial justification for any denial within thirty days of the denial.

(j) For health benefit plans purchased through the health insurance partnership established in chapter 70.47A RCW:

(i) Any surcharge established pursuant to RCW 70.47A.030(2)(e) shall be applied only to health benefit plans purchased through the health insurance partnership; and

(ii) Risk adjustment or reinsurance mechanisms may be used by the health insurance partnership program to redistribute funds to carriers participating in the health insurance partnership based on differences in risk attributable to individual choice of health plans or other factors unique to health insurance partnership participation. Use of such mechanisms shall be limited to the partnership program and will not affect small group health plans offered outside the partnership.

(4) Nothing in this section shall restrict the right of employees to collectively bargain for insurance providing benefits in excess of those provided herein.

(5)(a) Except as provided in this subsection, requirements used by an insurer in determining whether to provide coverage to a small employer shall be applied uniformly among all small employers applying for coverage or receiving coverage from the carrier.

(b) An insurer shall not require a minimum participation level greater than:

(i) One hundred percent of eligible employees working for groups with three or less employees; and

(ii) Seventy-five percent of eligible employees working for groups with more than three employees.

(c) In applying minimum participation requirements with respect to a small employer, a small employer shall not consider employees or dependents who have similar existing coverage in determining whether the applicable percentage of participation is met.

(d) An insurer may not increase any requirement for minimum employee participation or modify any requirement for minimum employer contribution applicable to a small employer at any time after the small employer has been accepted for coverage.

(e) Minimum participation requirements and employer premium contribution requirements adopted by the health insurance partnership board under RCW 70.47A.110 shall apply only to the employers and employees who purchase health benefit plans through the health insurance partnership.

(6) An insurer must offer coverage to all eligible employees of a small employer and their dependents. An insurer may not offer coverage to only certain individuals or dependents in a small employer group or to only part of the group. An insurer may not modify a health plan with respect to a small employer or any eligible employee or dependent, through riders, endorsements or otherwise, to restrict or exclude coverage or benefits for specific diseases, medical conditions, or services otherwise covered by the plan.

(7) As used in this section, "health benefit plan," "small employer," "adjusted community rate," and "wellness activities" mean the same as defined in RCW 48.43.005. [2009 c 131 § 1; 2008 c 143 § 6; 2007 c 260 § 7; 2004 c 244 § 1; 1995 c 265 § 14; 1990 c 187 § 2.]

Application—2004 c 244: "Sections 1 through 15 of this act apply to all small group health benefit plans issued or renewed on or after June 10, 2004." [2004 c 244 § 17.]

Captions not law—Effective dates—Savings—Severability—1995 c 265: See notes following RCW 70.47.015.

Finding—Intent—1990 c 187: "The legislature finds that the rising cost of comprehensive group health coverage is exceeding the affordability of many small businesses and their employees. The legislature further finds that certain public policies have an adverse impact on the cost of such coverage. It is therefore the intent of the legislature to reduce costs by authorizing the development of basic hospital and medical coverage for small groups." [1990 c 187 § 1.]

Severability—1990 c 187: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1990 c 187 § 6.]

48.21.060 The contract—Representations. There shall be a provision that a copy of the application, if any, of the policyholder shall be attached to the policy when issued; that all statements made by the policyholder or by the individuals insured shall in the absence of fraud be deemed representations and not warranties, and that no statement made

by any individual insured shall be used in any contest unless a copy of the instrument containing the statement is or has been furnished to such individual or to his or her beneficiary, if any. [2009 c 549 § 7102; 1947 c 79 § .21.06; Rem. Supp. 1947 § 45.21.06.]

48.21.110 Payment of benefits. The benefits payable under any policy or contract of group or blanket disability insurance shall be payable to the employee or other insured member of the group or to the beneficiary designated by him or her, other than the policyholder, employer or the association or any officer thereof as such, subject to provisions of the policy in the event there is no designated beneficiary as to all or any part of any sum payable at the death of the individual insured.

The policy may provide that any hospital, medical, or surgical benefits thereunder may be made payable jointly to the insured employee or member and the person furnishing such hospital, medical, or surgical services. [2009 c 549 § 7103; 1955 c 303 § 17; 1947 c 79 § .21.11; Rem. Supp. 1947 § 45.21.11.]

48.21.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. ***(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 116.]

Chapter 48.21A RCW
DISABILITY INSURANCE—EXTENDED HEALTH

Sections

48.21A.030 Insurers may join—Policyholder—Reduced benefit provision—Master group policy—Offering—Cancellation.
48.21A.060 Commissioner's powers—Forms—Rates—Standard provisions—Withdrawal of approval—Federal, state benefits—Annual reports.
48.21A.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. *(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*

48.21A.030 Insurers may join—Policyholder—Reduced benefit provision—Master group policy—Offering—Cancellation. Notwithstanding any other provision of this code or any other law which may be inconsistent herewith, any insurer may join with one or more other insurers, to plan, develop, underwrite, and offer and provide to any person who is sixty-five years of age or older and to the spouse of such person, extended health insurance against financial loss from accident or disease, or both. Such insurance may be offered, issued and administered jointly by two or more insurers by a group policy issued to a policyholder through an association formed for the purpose of offering, selling, issuing and administering such insurance. The policyholder may be an association, a trustee, or any other person. Any such policy may provide, among other things, that the benefits payable thereunder are subject to reduction if the individual insured has any other coverage providing hospital, surgical or medical benefits whether on an indemnity basis or a provision of service basis resulting in such insured being eligible for more than one hundred percent of covered expenses which he or she is required to pay, and any insurer issuing individual policies providing extended hospital, surgical or medical benefits to persons sixty-five years of age and older and their spouses may also use such a policy provision. A master group policy issued to an association or to a trustee or any person appointed by an association for the purpose of providing the insurances described in this section shall be another form of group disability insurance.

Any form of policy approved by the commissioner for an association shall be offered throughout Washington to all persons sixty-five and older and their spouses, and the coverage of any person insured under such a form of policy shall not be cancellable except for nonpayment of premiums unless the coverage of all persons insured under such form of policy is also canceled. [2009 c 549 § 7104; 1965 ex.s. c 70 § 29.]

48.21A.060 Commissioner's powers—Forms—Rates—Standard provisions—Withdrawal of approval—Federal, state benefits—Annual reports. The forms of the policies, applications, certificates or other evidence of insurance coverage and applicable premium rates relating thereto shall be filed with the commissioner. No such policy, contract, or other evidence of insurance, application or other form shall be sold, issued or used and no endorsement shall be attached to or printed or stamped thereon unless the form thereof shall have been approved by the commissioner or thirty days shall have expired after such filing without written notice from the commissioner of disapproval thereof. The commissioner shall disapprove the forms of such insurance if he or she finds that they are unjust, unfair, inequitable, misleading or deceptive or that the rates are by reasonable assumption excessive in relation to the benefits provided. In determining whether such rates by reasonable assumptions are excessive in relation to the benefits provided, the commissioner shall give due consideration to past and prospective claim experience, within and outside this state, and to fluctuations in such claim experience, to a reasonable risk charge, to contribution to surplus and contingency funds, to past and prospective expenses, both within and outside this state, and to all other relevant factors within and outside this state including any differing operating methods of the insurers joining in the issue of the policy. In exercising the powers conferred upon him or her by this chapter, the commissioner shall not be bound by any other requirement of this code with respect to standard provisions to be included in disability policies or forms.

The commissioner may, after hearing upon written notice, withdraw an approval previously given, upon such grounds as in his or her opinion would authorize disapproval upon original submission thereof. Any such withdrawal of approval after hearing shall be by notice in writing specifying the ground thereof and shall be effective at the expiration of such period, not less than ninety days after the giving of notice of withdrawal, as the commissioner shall in such notice prescribe.

If and when a program of hospital, surgical and medical benefits is enacted by the federal government or the state of Washington, the extended health insurance benefits provided by policies issued under this chapter shall be adjusted to avoid any duplication of benefits offered by the federal or state programs and the premium rates applicable thereto shall be adjusted to conform with the adjusted benefits.

The association shall submit an annual report to the insurance commissioner which shall become public information and shall provide information as to the number of persons insured, the names of the insurers participating in the association with respect to insurance offered under this chapter and the calendar year experience applicable to such insurance offered under this chapter, including premiums earned, claims paid during the calendar year, the amount of claims reserve established, administrative expenses, commissions, promotional expenses, taxes, contingency reserve, other expenses, and profit and loss for the year. The commissioner shall require the association to provide any and all information concerning the operations of the association deemed relevant by him for inclusion in the report. [2009 c 549 § 7105; 1965 ex.s. c 70 § 32.]

48.21A.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. ***(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 117.]

Chapter 48.22 RCW

CASUALTY INSURANCE

Sections

48.22.030 Underinsured, hit-and-run, phantom vehicle coverage to be provided—Purpose—Definitions—Exceptions—Conditions—Deductibles—Information on motorcycle or motor-driven cycle coverage—Intended victims.

48.22.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. *(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*

48.22.030 Underinsured, hit-and-run, phantom vehicle coverage to be provided—Purpose—Definitions—Exceptions—Conditions—Deductibles—Information on motorcycle or motor-driven cycle coverage—Intended victims. (1) "Underinsured motor vehicle" means a motor vehicle with respect to the ownership, maintenance, or use of which either no bodily injury or property damage liability bond or insurance policy applies at the time of an accident, or with respect to which the sum of the limits of liability under all bodily injury or property damage liability bonds and insurance policies applicable to a covered person after an accident is less than the applicable damages which the covered person is legally entitled to recover.

(2) No new policy or renewal of an existing policy insuring against loss resulting from liability imposed by law for bodily injury, death, or property damage, suffered by any person arising out of the ownership, maintenance, or use of a motor vehicle shall be issued with respect to any motor vehicle registered or principally garaged in this state unless coverage is provided therein or supplemental thereto for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of underinsured motor vehicles, hit-and-run motor vehicles, and phantom vehicles because of bodily injury, death, or property damage, resulting therefrom, except while operating or occupying a motorcycle or motor-driven cycle, and except while operating or occupying a motor vehicle owned or available for the regular use by the named insured or any family member, and which is not insured under the liability coverage of the policy. The coverage required to be offered under this chapter is not applicable to general liability policies, commonly known as umbrella policies, or other policies which apply only as excess to the insurance directly applicable to the vehicle insured.

(3) Except as to property damage, coverage required under subsection (2) of this section shall be in the same amount as the insured's third party liability coverage unless the insured rejects all or part of the coverage as provided in subsection (4) of this section. Coverage for property damage need only be issued in conjunction with coverage for bodily injury or death. Property damage coverage required under subsection (2) of this section shall mean physical damage to the insured motor vehicle unless the policy specifically provides coverage for the contents thereof or other forms of property damage.

(4) A named insured or spouse may reject, in writing, underinsured coverage for bodily injury or death, or property damage, and the requirements of subsections (2) and (3) of this section shall not apply. If a named insured or spouse has rejected underinsured coverage, such coverage shall not be included in any supplemental or renewal policy unless a named insured or spouse subsequently requests such coverage in writing. The requirement of a written rejection under this subsection shall apply only to the original issuance of policies issued after July 24, 1983, and not to any renewal or replacement policy. When a named insured or spouse chooses a property damage coverage that is less than the

insured's third party liability coverage for property damage, a written rejection is not required.

(5) The limit of liability under the policy coverage may be defined as the maximum limits of liability for all damages resulting from any one accident regardless of the number of covered persons, claims made, or vehicles or premiums shown on the policy, or premiums paid, or vehicles involved in an accident.

(6) The policy may provide that if an injured person has other similar insurance available to him or her under other policies, the total limits of liability of all coverages shall not exceed the higher of the applicable limits of the respective coverages.

(7)(a) The policy may provide for a deductible of not more than three hundred dollars for payment for property damage when the damage is caused by a hit-and-run driver or a phantom vehicle.

(b) In all other cases of underinsured property damage coverage, the policy may provide for a deductible of not more than one hundred dollars.

(8) For the purposes of this chapter, a "phantom vehicle" shall mean a motor vehicle which causes bodily injury, death, or property damage to an insured and has no physical contact with the insured or the vehicle which the insured is occupying at the time of the accident if:

(a) The facts of the accident can be corroborated by competent evidence other than the testimony of the insured or any person having an underinsured motorist claim resulting from the accident; and

(b) The accident has been reported to the appropriate law enforcement agency within seventy-two hours of the accident.

(9) An insurer who elects to write motorcycle or motor-driven cycle insurance in this state must provide information to prospective insureds about the coverage.

(10) An insurer who elects to write motorcycle or motor-driven cycle insurance in this state must provide an opportunity for named insureds, who have purchased liability coverage for a motorcycle or motor-driven cycle, to reject underinsured coverage for that motorcycle or motor-driven cycle in writing.

(11) If the covered person seeking underinsured motorist coverage under this section was the intended victim of the tort feasor, the incident must be reported to the appropriate law enforcement agency and the covered person must cooperate with any related law enforcement investigation.

(12) The purpose of this section is to protect innocent victims of motorists of underinsured motor vehicles. Covered persons are entitled to coverage without regard to whether an incident was intentionally caused. However, a person is not entitled to coverage if the insurer can demonstrate that the covered person intended to cause the event for which a claim is made under the coverage described in this section. As used in this section, and in the section of policies providing the underinsured motorist coverage described in this section, "accident" means an occurrence that is unexpected and unintended from the standpoint of the covered person.

(13) "Underinsured coverage," for the purposes of this section, means coverage for "underinsured motor vehicles," as defined in subsection (1) of this section. [2009 c 549 § 7106; 2007 c 80 § 14. Prior: 2006 c 187 § 1; 2006 c 110 § 1; 2006 c 25 § 17; 2004 c 90 § 1; 1985 c 328 § 1; 1983 c 182 § 1; 1981 c 150 § 1; 1980 c 117 § 1; 1967 c 150 § 27.]

Severability—1983 c 182: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 c 182 § 3.]

Effective date—1981 c 150: "This act shall take effect on September 1, 1981." [1981 c 150 § 3.]

Effective date—1980 c 117: "This act shall take effect on September 1, 1980." [1980 c 117 § 8.]

48.22.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. ***(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 118.]

Chapter 48.23 RCW
LIFE INSURANCE AND ANNUITIES

Sections

48.23.015 Purchase or exchange of annuities—Definitions—Standards—Requirements—Conduct—Records—Penalties—Rules.
48.23.070 Participation in surplus.
48.23.525 Individual life insurance—Noninsurance benefits—Rules.
48.23.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. *(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*

48.23.015 Purchase or exchange of annuities—Definitions—Standards—Requirements—Conduct—Records—Penalties—Rules. (1) For the purposes of this section:

(a) "Annuity" means a fixed annuity or variable annuity that is individually solicited, whether the product is classified as an individual or group annuity.

(b) "Recommendation" means advice provided by an insurance producer, or an insurer when no producer is involved, to an individual consumer that results in a purchase or exchange of an annuity in accordance with that advice.

(2) Insurers and insurance producers must comply with the following requirements in recommending and executing a purchase or exchange of an annuity:

(a) In recommending the purchase of an annuity or the exchange of an annuity that results in another insurance transaction or series of insurance transactions to a consumer, the insurance producer, or the insurer when no producer is

involved, must have reasonable grounds for believing that the recommendation is suitable for the consumer on the basis of the facts disclosed by the consumer about their investments and other insurance products and as to their financial situation and needs.

(b) Prior to the execution of a purchase or exchange of an annuity resulting from a recommendation, an insurance producer, or an insurer when no producer is involved, shall make reasonable efforts to obtain information concerning:

(i) The consumer's financial status;

(ii) The consumer's tax status;

(iii) The consumer's investment objectives; and

(iv) Other information used or considered to be reasonable by the insurance producer, or the insurer when no producer is involved, in making recommendations to the consumer.

(3) An insurer or insurance producer's recommendation must be reasonable under all circumstances actually known to the insurer or insurance producer at the time of the recommendation. Neither an insurance producer nor an insurer when no producer is involved, has any obligation to a consumer under subsection (2) of this section related to any recommendation if a consumer:

(a) Refuses to provide relevant information requested by the insurer or insurance producer;

(b) Decides to enter into an insurance transaction that is not based on a recommendation of the insurer or insurance producer; or

(c) Fails to provide complete or accurate information.

(4) An insurer must assure that a system to supervise recommendations, reasonably designed to achieve compliance with this section, is established and maintained. The system must include, but is not limited to, written procedures and conducting periodic review of its records that are reasonably designed to assist in detecting and preventing violations of this section.

(a) An insurer may contract with a third party, including insurance producers, a general agent, or independent agency, to establish and maintain a system of supervision as required in this subsection with respect to insurance producers under contract with or employed by the third party. An insurer must make reasonable inquiry to assure that the third party is performing the functions required in this subsection and must take action as is reasonable under the circumstances to enforce the contractual obligation to perform the functions. An insurer may comply with its obligation to make reasonable inquiry by doing all of the following:

(i) Annually obtaining a certification from a third party senior manager with responsibility for the delegated functions that the manager has a reasonable basis to represent, and does represent, that the third party is performing the required functions; and

(ii) Based on reasonable selection criteria, periodically selecting third parties contracting under this subsection for a review to determine whether the third parties are performing the required functions. The insurer shall perform those procedures to conduct the review that are reasonable under the circumstances.

(b) An insurer, or the contracted third party if a general agent or independent agency, is not required to:

(i) Review, or provide for review of, all insurance producer solicited transactions; or

(ii) Include in its system of supervision an insurance producer's recommendations to consumers of products other than the annuities offered by the insurer, general agent, or independent agency.

(c) A general agent or independent agency contracting with an insurer to supervise compliance with this section shall promptly, when requested by the insurer, give a certification of compliance or give a clear statement that it is unable to meet the certification criteria. A person may not provide a certification unless the person:

(i) Is a senior manager with responsibility for the delegated functions; and

(ii) Has a reasonable basis for making the certification.

(5) Compliance with the financial industry regulatory authority conduct rules pertaining to suitability satisfies the requirements under this section for the recommendation of annuities registered under the securities act of 1933 (15 U.S.C. Sec. 77(a) et seq. or as hereafter amended). The insurance commissioner must notify the appropriate committees of the house of representatives and senate if there are changes regarding the registration of annuities under the securities act of 1933 that affect the application of this subsection. This subsection does not limit the insurance commissioner's ability to enforce this section.

(6) The commissioner may order an insurer, an insurance producer, or both, to take reasonably appropriate corrective action for any consumer harmed by the insurer's or insurance producer's violation of this section.

(a) Any applicable penalty under this or other sections of Title 48 RCW may be reduced or eliminated by the commissioner if corrective action for the consumer was taken promptly after a violation was discovered.

(b) This subsection does not limit the commissioner's ability to enforce this section or other applicable sections of Title 48 RCW.

(7) Insurers and insurance producers must maintain or be able to make available to the commissioner records of the information collected from the consumer and other information used in making the recommendations that were the basis for the insurance transaction for five years after the insurance transaction is completed by the insurer, or for five years after the annuity begins paying benefits, whichever is longer. An insurer is permitted, but is not required, to maintain documentation on behalf of an insurance producer. This section does not relieve an insurance producer of the obligation to maintain records of insurance transactions as required by RCW 48.17.470.

(8) The commissioner may adopt rules to implement and administer this section.

(9) Unless otherwise specifically included, this section does not apply to recommendations involving:

(a) Direct response solicitations when there is no recommendation based on information collected from the consumer under this section; or

(b) Contracts used to fund:

(i) An employee pension or welfare benefit plan that is covered by the employment and income security act;

(ii) A plan described by sections 401(a), 401(k), 403(b), 408(k), or 408(p) of the internal revenue code, as amended, if established or maintained by an employer;

(iii) A government or church plan defined in section 414 of the internal revenue code, a government or church welfare benefit plan or a deferred compensation plan of a state or local government or tax exempt organization under section 457 of the internal revenue code;

(iv) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

(v) Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or

(vi) Formal prepaid funeral contracts.

(10) This section does not affect the application of chapter 21.20 RCW. [2009 c 18 § 2.]

Purpose—2009 c 18: "The purpose of this act is to permit and set standards for producers and insurers selling annuity products issued after July 26, 2009, that ensure consumers purchase annuities suitable to their financial and insurance needs and life circumstances." [2009 c 18 § 1.]

48.23.070 Participation in surplus. (1) In all policies which provide for participation in the insurer's surplus, there shall be a provision that the policy shall so participate annually in the insurer's divisible surplus as apportioned by the insurer, beginning not later than the end of the third policy year. Any policy containing provision for annual participation beginning at the end of the first policy year, may also provide that each dividend shall be paid subject to the payment of the premiums for the next ensuing year. The insured under any annual dividend policy shall have the right each year to have the current dividend arising from such participation either paid in cash, or applied in accordance with such other dividend option as may be specified in the policy and elected by the insured. The policy shall further provide which of the options shall be effective if the insured shall fail to notify the insurer in writing of his or her election within the period of grace allowed for the payment of premium.

(2) This section shall not apply to paid-up nonforfeiture benefits nor paid-up policies issued on default in payment of premiums. [2009 c 549 § 7107; 1947 c 79 § .23.07; Rem. Supp. 1947 § 45.23.07.]

48.23.525 Individual life insurance—Noninsurance benefits—Rules. (1) A life insurer may include the following noninsurance benefits as part of a policy of individual life insurance, with the prior approval of the commissioner:

(a) Will preparation services;

(b) Financial planning and estate planning services;

(c) Probate and estate settlement services; and

(d) Such other services as the commissioner may identify by rule.

(2) The commissioner may adopt rules to ensure disclosure of the noninsurance benefits permitted under this section, including but not limited to guidelines concerning the provision of the coverage.

(3) Those providing the services listed in subsection (1) of this section must be appropriately licensed.

(4) This section does not require the commissioner to approve any particular proposed noninsurance benefit. The commissioner may disapprove any proposed noninsurance benefit that the commissioner determines may tend to promote or facilitate the violation of any other section of this title.

(5) This section does not expand, limit, or otherwise affect the authority and ethical obligations of those who are authorized by the state supreme court to practice law in this state. This section does not limit the prohibition against the unauthorized practice of law under chapter 2.48 RCW.

(6) This section does not affect the application of chapter 21.20 RCW. [2009 c 76 § 1.]

48.23.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. ***(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 119.]

Chapter 48.24 RCW
GROUP LIFE AND ANNUITIES

Sections

48.24.120 Incontestability.
48.24.130 The contract—Representations.
48.24.140 Insurability.
48.24.170 Certificates.
48.24.180 Conversion on termination of eligibility.
48.24.190 Conversion on termination of policy.
48.24.200 Death pending conversion.
48.24.280 Group life insurance—Noninsurance benefits.
48.24.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. *(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*

48.24.120 Incontestability. There shall be a provision that the validity of the policy shall not be contested, except for nonpayment of premiums, after it has been in force for two years from its date of issue; and that no statement made by an individual insured under the policy relating to his or her insurability shall be used in contesting the validity of the insurance with respect to which such statement was made after such insurance has been in force prior to the contest for a period of two years during such individual's lifetime nor unless it is contained in a written instrument signed by him [or her]. [2009 c 549 § 7108; 1947 c 79 § 24.12; Rem. Supp. 1947 § 45.24.12.]

48.24.130 The contract—Representations. There shall be a provision that a copy of the application, if any, of the policyholder shall be attached to the policy when issued

and become a part of the contract; that all statements made by the policyholder or by the persons insured shall be deemed representations and not warranties, and that no statement made by any person insured shall be used in any contest unless a copy of the instrument containing the statement is or has been furnished to such person or to his or her beneficiary. [2009 c 549 § 7109; 1947 c 79 § .24.13; Rem. Supp. 1947 § 45.24.13.]

48.24.140 Insurability. There shall be a provision setting forth the conditions, if any, under which the insurer reserves the right to require a person eligible for insurance to furnish evidence of individual insurability satisfactory to the insurer as a condition to part or all of his or her coverage. [2009 c 549 § 7110; 1947 c 79 § .24.14; Rem. Supp. 1947 § 45.24.14.]

48.24.170 Certificates. There shall be a provision that the insurer will issue to the policyholder for delivery to each individual insured a certificate setting forth a statement as to the insurance protection to which he or she is entitled, to whom the insurance benefits are payable, described by name, relationship, or reference to the insurance records of the policyholder or insurer, and the rights and conditions set forth in RCW 48.24.180, 48.24.190 and 48.24.200, following. [2009 c 549 § 7111; 1961 c 194 § 10; 1947 c 79 § .24.17; Rem. Supp. 1947 § 45.24.17.]

48.24.180 Conversion on termination of eligibility. There shall be a provision that if the insurance, or any portion of it, on an individual covered under the policy, other than a child insured pursuant to RCW 48.24.030, ceases because of termination of employment or of membership in the class or classes eligible for coverage under the policy, such individual shall be entitled to have issued to him or her by the insurer, without evidence of insurability, an individual policy of life insurance without disability or other supplementary benefits, provided application for the individual policy shall be made, and the first premium paid to the insurer, within thirty-one days after such termination, and provided further that,

(1) the individual policy shall, at the option of such individual, be on any one of the forms, except term insurance, then customarily issued by the insurer at the age and for the amount applied for;

(2) the individual policy shall be in an amount not in any event in excess of the amount of life insurance which ceases because of such termination nor less than one thousand dollars unless a smaller amount of coverage was provided for such individual under the group policy: PROVIDED, That any amount of insurance which matures on the date of such termination or has matured prior thereto under the group policy as an endowment payable to the individual insured, whether in one sum or in installments or in the form of an annuity, shall not, for the purposes of this provision, be included in the amount which is considered to cease because of such termination; and

(3) the premium on the individual policy shall be at the insurer's then customary rate applicable to the form and amount of the individual policy, to the class of risk to which such individual then belongs, and to his or her age attained on the effective date of the individual policy. [2009 c 549 § 7112; 1955 c 303 § 24; 1947 c 79 § .24.18; Rem. Supp. 1947 § 45.24.18.]

48.24.190 Conversion on termination of policy. There shall be a provision that if the group policy terminates or is amended so as to terminate the insurance of any class of insured individuals, every individual insured thereunder at the date of such termination, other than a child insured pursuant to RCW 48.24.030, whose insurance terminates and who has been so insured for at least five years prior to such termination date shall be entitled to have issued to him or her by the insurer an individual policy of life insurance, subject to the same conditions and limitations as are provided by RCW 48.24.180, except that the group policy may provide that the amount of such individual policy shall not exceed the smaller of (a) [(1)] the amount of the individual's life insurance protection ceasing because of the termination or amendment of the group policy, less the amount of any life insurance for which he or she is or becomes eligible under any group policy issued or reinstated by the same or another insurer within thirty-one days of such termination and (b) [(2)] two thousand dollars. [2009 c 549 § 7113; 1953 c 197 § 13; 1947 c 79 § .24.19; Rem. Supp. 1947 § 45.24.19.]

48.24.200 Death pending conversion. There shall be a provision that if a person insured under the group policy dies during the period within which he or she would have been entitled to have an individual policy issued to him or her in accordance with RCW 48.24.180 and 48.24.190, and before such an individual policy shall have become effective, the amount of life insurance which he or she would have been entitled to have issued to him or her under such individual policy shall be payable as a claim under the group policy, whether or not application for the individual policy or the payment of the first premium therefor has been made. [2009 c 549 § 7114; 1947 c 79 § .24.20; Rem. Supp. 1947 § 45.24.20.]

48.24.280 Group life insurance—Noninsurance benefits. (1) A life insurer may include the following noninsurance benefits as part of a policy or certificate of group life insurance, with the prior approval of the commissioner:

(a) Will preparation services;

(b) Financial planning and estate planning services;

(c) Probate and estate settlement services; and

(d) Such other services as the commissioner may identify by rule.

(2) The commissioner may adopt rules to regulate the disclosure of noninsurance benefits permitted under this section, including but not limited to guidelines regarding the coverage provided under the policy or certificate of insurance.

(3) Those providing the services listed in subsection (1) of this section must be appropriately licensed.

(4) This section does not require the commissioner to approve any particular proposed noninsurance benefit. The commissioner may disapprove any proposed noninsurance benefit that the commissioner determines may tend to pro-

mote or facilitate the violation of any other section of this title.

(5) This section does not expand, limit, or otherwise affect the authority and ethical obligations of those who are authorized by the state supreme court to practice law in this state. This section does not limit the prohibition against the unauthorized practice of law under chapter 2.48 RCW.

(6) This section does not affect the application of chapter 21.20 RCW. [2009 c 76 § 2.]

48.24.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. ***(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 120.]

Chapter 48.25 RCW
INDUSTRIAL LIFE INSURANCE

Sections

48.25.180 Conversion—Weekly premium policies.
48.25.190 Conversion—Monthly premium policies.
48.25.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. *(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*

48.25.180 Conversion—Weekly premium policies. There shall be a provision in the case of weekly premium policies granting, upon proper written request and upon presentation of evidence of the insurability of the insured satisfactory to the insurer, the privilege of converting his or her weekly premium industrial insurance to any form of life insurance with less frequent premium payments regularly issued by the insurer, in accordance with terms and conditions agreed upon with the insurer. The privilege of making such conversion need be granted only if the insurer's weekly premium industrial policies on the life insured, in force as premium paying insurance and on which conversion is requested, grant benefits in event of death, exclusive of additional accidental death benefits and exclusive of any dividend additions, in an amount not less than the minimum amount of such insurance with less frequent premium payments issued by the insurer at the age of the insured on the plan of industrial or ordinary insurance desired. [2009 c 549 § 7115; 1947 c 79 § .25.18; Rem. Supp. 1947 § 45.25.18.]

48.25.190 Conversion—Monthly premium policies. There shall be a provision, in the case of monthly premium industrial policies, granting, upon proper written request and upon presentation of evidence of the insurability of the insured satisfactory to the insurer, the privilege of converting his or her monthly premium industrial insurance to any form of ordinary life insurance regularly issued by the insurer, in accordance with terms and conditions agreed upon with the insurer. The privilege of making such conversions need be granted only if the insurer's monthly premium industrial policies on the life insured, in force as premium paying insurance and on which conversion is requested, grant benefits in event of death, exclusive of additional accidental death benefits and exclusive of any dividend additions, in an amount not less than the minimum amount of ordinary insurance issued by the insurer at the age of the insured on the plan of ordinary insurance desired. [2009 c 549 § 7116; 1947 c 79 § .25.19; Rem. Supp. 1947 § 45.25.19.]

48.25.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. ***(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 121.]

Chapter 48.27 RCW
PROPERTY INSURANCE

Sections

48.27.030 Policy does not cover flood damage—Notice to policyholder.

48.27.030 Policy does not cover flood damage—Notice to policyholder. (1) Every insurer issuing a homeowner, condominium unit owner, residential tenant, and residential fire insurance policy that does not cover damage caused by flood must notify the policyholder that the policy does not cover damage caused by flood. The notice must also inform the policyholder how to contact the national flood insurance program ("NFIP") or one of the NFIP's agents. This notice must be provided:

(a) At the time the policy is issued; and

(b) At the time the policy is renewed.

(2) The following language, when combined with current information about how to contact the NFIP or its agent, satisfies the notice requirements of this section:

"This policy does not cover damage to your property caused by flooding. The federal government offers flood

insurance through the National Flood Insurance Program to residents of communities that participate in its program. You can learn more about the National Flood Insurance Program at www.floodsmart.gov or by calling (888) 379-9531."

(3) Nothing in this section invalidates a flood exclusion, or any other exclusion, in an insurance policy subject to this section. [2009 c 14 § 1.]

Chapter 48.28 RCW
SURETY INSURANCE

Sections

48.28.020 Fiduciary bonds—Premium as lawful expense.

48.28.020 Fiduciary bonds—Premium as lawful expense. Any fiduciary required by law to give bonds, may include as part of his or her lawful expense to be allowed by the court or official by whom he or she was appointed, the reasonable amount paid as premium for such bonds to the authorized surety insurer or to the surplus line surety insurer which issued or guaranteed such bonds. [2009 c 549 § 7117; 1955 c 30 § 1. Prior: 1947 c 79 § .28.02; Rem. Supp. 1947 § 45.28.02.]

Chapter 48.29 RCW
TITLE INSURERS

Sections

48.29.901 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. *(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*

48.29.901 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. ***(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 122.]

Chapter 48.30 RCW
UNFAIR PRACTICES AND FRAUDS

Sections

48.30.020 Anticompact law.
48.30.120 Misconduct of officers, employees.
48.30.130 Presumption of knowledge of director.
48.30.140 Rebating.
48.30.150 Illegal inducements.
48.30.250 Interlocking ownership, management.
48.30.260 Right of debtor or borrower to select insurance producer, surplus line broker, or insurer.
48.30.270 Public building or construction contracts—Surety bonds or insurance—Violations concerning—Exemption.
48.30.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. *(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*

48.30.020 Anticompact law. (1) No person shall either within or outside of this state enter into any contract, understanding or combination with any other person to do jointly or severally any act or engage in any practice for the purpose of

(a) controlling the rates to be charged for insuring any risk or any class of risks in this state; or

(b) unfairly discriminating against any person in this state by reason of his or her plan or method of transacting insurance, or by reason of his or her affiliation or nonaffiliation with any insurance organization; or

(c) establishing or perpetuating any condition in this state detrimental to free competition in the business of insurance or injurious to the insuring public.

(2) This section shall not apply relative to ocean marine and foreign trade insurances.

(3) This section shall not be deemed to prohibit the doing of things permitted to be done in accordance with the provisions of chapter 48.19 RCW of this code.

(4) Whenever the commissioner has knowledge of any violation of this section he or she shall forthwith order the offending person to discontinue such practice immediately or show cause to the satisfaction of the commissioner why such order should not be complied with. If the offender is an insurer or a licensee under this code and fails to comply with such order within thirty days after receipt thereof, the commissioner may forthwith revoke the offender's certificate of authority or licenses. [2009 c 549 § 7118; 1947 c 79 § .30.02; Rem. Supp. 1947 § 45.30.02.]

48.30.120 Misconduct of officers, employees. No director, officer, agent, attorney-in-fact, or employee of an insurer shall:

(1) Knowingly receive or possess himself of any of its property, otherwise than in payment for a just demand, and with intent to defraud, omit to make or to cause or direct to be made, a full and true entry thereof in its books and accounts; nor

(2) Make or concur in making any false entry, or concur in omitting to make any material entry, in its books or accounts; nor

(3) Knowingly concur in making or publishing any written report, exhibit or statement of its affairs or pecuniary condition containing any material statement which is false, or omit or concur in omitting any statement required by law to be contained therein; nor

(4) Having the custody or control of its books, willfully fail to make any proper entry in the books of the insurer as required by law, or to exhibit or allow the same to be inspected and extracts to be taken therefrom by any person entitled by law to inspect the same, or take extracts therefrom; nor

(5) If a notice of an application for an injunction or other legal process affecting or involving the property or business of the insurer is served upon him or her, fail to disclose the fact of such service and the time and place of such application to the other directors, officers, and managers thereof; nor

(6) Fail to make any report or statement lawfully required by a public officer. [2009 c 549 § 7119; 1947 c 79 § .30.12; Rem. Supp. 1947 § 45.30.12.]

48.30.130 Presumption of knowledge of director. A director of an insurer is deemed to have such knowledge of its affairs as to enable him or her to determine whether any act, proceeding, or omission of its directors is a violation of any provision of this chapter. If present at a meeting of directors at which any act, proceeding, or omission of its directors which is a violation of any such provision occurs, he or she must be deemed to have concurred therein unless at the time he or she causes or in writing requires his or her dissent therefrom to be entered on the minutes of the directors.

If absent from such meeting, he or she must be deemed to have concurred in any such violation if the facts constituting such violation appear on the records or minutes of the proceedings of the board of directors, and he or she remains a director of the insurer for six months thereafter without causing or in writing requiring his or her dissent from such violation to be entered upon such record or minutes. [2009 c 549 § 7120; 1947 c 79 § .30.13; Rem. Supp. 1947 § 45.30.13.]

48.30.140 Rebating. (1) Except to the extent provided for in an applicable filing with the commissioner then in effect, no insurer, insurance producer, or title insurance agent shall, as an inducement to insurance, or after insurance has been effected, directly or indirectly, offer, promise, allow, give, set off, or pay to the insured or to any employee of the insured, any rebate, discount, abatement, or reduction of premium or any part thereof named in any insurance contract, or any commission thereon, or earnings, profits, dividends, or other benefit, or any other valuable consideration or inducement whatsoever which is not expressly provided for in the policy.

(2) Subsection (1) of this section shall not apply as to commissions paid to a licensed insurance producer, or title insurance agent for insurance placed on that person's own property or risks.

(3) This section shall not apply to the allowance by any marine insurer, or marine insurance producer, to any insured, in connection with marine insurance, of such discount as is sanctioned by custom among marine insurers as being additional to the insurance producer's commission.

(4) This section shall not apply to advertising or promotional programs conducted by insurers, insurance producers, or title insurance agents whereby prizes, goods, wares, or merchandise, not exceeding twenty-five dollars in value per person in the aggregate in any twelve month period, are given to all insureds or prospective insureds under similar qualifying circumstances.

(5) This section does not apply to an offset or reimbursement of all or part of a fee paid to an insurance producer as provided in RCW 48.17.270.

(6)(a) Subsection (1) of this section shall not be construed to prohibit a health carrier or disability insurer from including as part of a group or individual health benefit plan or contract containing health benefits, a wellness program which meets the requirements for an exception from the prohibition against discrimination based on a health factor under the health insurance portability and accountability act (P.L. 104-191; 110 Stat. 1936) and regulations adopted pursuant to that act.

(b) For purposes of this subsection: (i) "Health carrier" and "health benefit plan" have the same meaning as provided in RCW 48.43.005; and (ii) "wellness program" has the same meaning as provided in 45 CFR 146.121(f). [2009 c 329 § 1; 2008 c 217 § 35; 1994 c 203 § 3; 1990 1st ex.s. c 3 § 8; 1985 c 264 § 14; 1975-'76 2nd ex.s. c 119 § 3; 1947 c 79 § .30.14; Rem. Supp. 1947 § 45.30.14.]

Severability--Effective date—2008 c 217: See notes following RCW 48.03.020.

48.30.150 Illegal inducements. (1) No insurer, insurance producer, title insurance agent, or other person shall, as an inducement to insurance, or in connection with any insurance transaction, provide in any policy for, or offer, or sell, buy, or offer or promise to buy or give, or promise, or allow to, or on behalf of, the insured or prospective insured in any manner whatsoever:

(a) Any shares of stock or other securities issued or at any time to be issued on any interest therein or rights thereto; or

(b) Any special advisory board contract, or other contract, agreement, or understanding of any kind, offering, providing for, or promising any profits or special returns or special dividends; or

(c) Any prizes, goods, wares, or merchandise of an aggregate value in excess of twenty-five dollars.

(2) Subsection (1) of this section shall not be deemed to prohibit the sale or purchase of securities as a condition to or in connection with surety insurance insuring the performance of an obligation as part of a plan of financing found by the commissioner to be designed and operated in good faith primarily for the purpose of such financing, nor shall it be deemed to prohibit the sale of redeemable securities of a registered investment company in the same transaction in which life insurance is sold.

(3)(a) Subsection (1) of this section shall not be deemed to prohibit a health carrier or disability insurer from including as part of a group or individual health benefit plan or contract providing health benefits, a wellness program which meets the requirements for an exception from the prohibition against discrimination based on a health factor under the health insurance portability and accountability act (P.L. 104-191; 110 Stat. 1936) and regulations adopted pursuant to that act.

(b) For purposes of this subsection: (i) "Health carrier" and "health benefit plan" have the same meaning as provided in RCW 48.43.005; and (ii) "wellness program" has the same meaning as provided in 45 CFR 146.121(f). [2009 c 329 § 2; 2008 c 217 § 36; 1990 1st ex.s. c 3 § 9; 1975-'76 2nd ex.s. c 119 § 4; 1957 c 193 § 18; 1947 c 79 § .30.15; Rem. Supp. 1947 § 45.30.15.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

48.30.250 Interlocking ownership, management. (1) Any insurer may retain, invest in or acquire the whole or any part of the capital stock of any other insurer or insurers, or have a common management with any other insurer or insurers, unless such retention, investment, acquisition or common management is inconsistent with any other provision of this title, or unless by reason thereof the business of such insurers with the public is conducted in a manner which substantially lessens competition generally in the insurance business or tends to create a monopoly therein.

(2) Any person otherwise qualified may be a director of two or more insurers which are competitors, unless the effect thereof is to substantially lessen competition between insurers generally or tends to create a monopoly.

(3) If the commissioner finds, after a hearing thereon, that there is violation of this section he or she shall order all such persons and insurers to cease and desist from such violation within such time, or extension thereof, as may be specified in such order. [2009 c 549 § 7121; 1949 c 190 § 34; Rem. Supp. 1949 § 45.30.25.]

48.30.260 Right of debtor or borrower to select insurance producer, surplus line broker, or insurer. (1) Every debtor or borrower, when property insurance of any kind is required in connection with the debt or loan, shall have reasonable opportunity and choice in the selection of the insurance producer, surplus line broker, and insurer through whom such insurance is to be placed; but only if the insurance is properly provided for the protection of the creditor or lender, whether by policy or binder, not later than at commencement of risk as to such property as respects such creditor or lender, and in the case of renewal of insurance, only if the renewal policy, or a proper binder therefor containing a brief description of the coverage bound and the identity of the insurer in which the coverage is bound, is delivered to the creditor or lender not later than thirty days prior to the renewal date.

(2) Every person who lends money or extends credit and who solicits insurance on real and personal property must explain to the borrower in prominently displayed writing that the insurance related to such loan or credit extension may be purchased from an insurer, surplus line broker, or insurance producer of the borrower's choice, subject only to the lender's right to reject a given insurer, surplus line broker, or insurance producer as provided in subsection (3)(b) of this section.

(3) No person who lends money or extends credit may:

(a) Solicit insurance for the protection of property, after a person indicates interest in securing a loan or credit extension, until such person has received a commitment from the lender as to a loan or credit extension;

(b) Unreasonably reject a contract of insurance furnished by the borrower for the protection of the property securing the credit or lien. A rejection shall not be deemed unreasonable if it is based on reasonable standards, uniformly applied, relating to the extent of coverage required and the financial soundness and the services of an insurer. Such standards shall not discriminate against any particular type of insurer, nor shall such standards call for rejection of an insurance contract because the contract contains coverage in addition to that required in the credit transaction;

(c) Require that any borrower, mortgagor, purchaser, insurer, surplus line broker, or insurance producer pay a separate charge, in connection with the handling of any contract of insurance required as security for a loan, or pay a separate charge to substitute the insurance policy of one insurer for that of another. This subsection does not include the interest which may be charged on premium loans or premium advancements in accordance with the terms of the loan or credit document;

(d) Use or disclose, without the prior written consent of the borrower, mortgagor, or purchaser taken at a time other than the making of the loan or extension of credit, information relative to a contract of insurance which is required by the credit transaction, for the purpose of replacing such insurance;

(e) Require any procedures or conditions of duly licensed insurance producers, surplus line brokers, or insurers not customarily required of those insurance producers, surplus line brokers, or insurers affiliated or in any way connected with the person who lends money or extends credit; or

(f) Require property insurance in an amount in excess of the amount which could reasonably be expected to be paid under the policy, or combination of policies, in the event of a loss.

(4) Nothing contained in this section shall prevent a person who lends money or extends credit from placing insurance on real or personal property in the event the mortgagor, borrower, or purchaser has failed to provide required insurance in accordance with the terms of the loan or credit document.

(5) Nothing contained in this section shall apply to credit life or credit disability insurance. [2009 c 162 § 25; 2008 c 217 § 41; 1990 1st ex.s. c 3 § 13; 1988 c 248 § 18; 1984 c 6 § 2; 1977 c 61 § 1; 1957 c 193 § 20.]

Effective date—2009 c 162: See note following RCW 48.03.020.

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

48.30.270 Public building or construction contracts—Surety bonds or insurance—Violations concerning—Exemption. (1) No officer or employee of this state, or of any public agency, public authority or public corporation except a public corporation or public authority created pursuant to agreement or compact with another state, and no person acting or purporting to act on behalf of such officer or employee, or public agency or public authority or public corporation, shall, with respect to any public building or construction contract which is about to be, or which has been competitively bid, require the bidder to make application to, or to furnish financial data to, or to obtain or procure, any of the surety bonds or contracts of insurance specified in connection with such contract, or specified by any law, general, special or local, from a particular insurer, surplus line broker, or insurance producer.

(2) No such officer or employee or any person, acting or purporting to act on behalf of such officer or employee shall negotiate, make application for, obtain or procure any of such surety bonds or contracts of insurance, except contracts of

insurance for builder's risk or owner's protective liability, which can be obtained or procured by the bidder, contractor or subcontractor.

(3) This section shall not be construed to prevent the exercise by such officer or employee on behalf of the state or such public agency, public authority, or public corporation of its right to approve the form, sufficiency or manner or execution of the surety bonds or contracts of insurance furnished by the insurer selected by the bidder to underwrite such bonds, or contracts of insurance.

(4) Any provisions in any invitation for bids, or in any of the contract documents, in conflict with this section are declared to be contrary to the public policy of this state.

(5) A violation of this section shall be subject to the penalties provided by RCW 48.01.080.

(6) This section shall not apply to public construction projects, when the actual or estimated aggregate value of the project, exclusive of insurance and surety costs, exceeds two hundred million dollars. For purposes of applying the two hundred million dollar threshold set forth in this subsection, the term "public construction project" means a project that has a public owner and has phases, segments, or component parts relating to a common geographic site or public transportation system, but does not include the aggregation of unrelated construction projects.

(7) The exclusions specified in subsection (6) of this section do not apply to surety bonds. [2009 c 162 § 26; 2008 c 217 § 42; 2005 c 352 § 1; (2003 c 323 § 2 repealed by 2005 c 352 § 2); 2003 c 323 § 1. Prior: 2000 2nd sp.s. c 4 § 33; 2000 c 143 § 2; 1983 2nd ex.s. c 1 § 6; 1967 ex.s. c 12 § 3.]

Effective date—2009 c 162: See note following RCW 48.03.020.

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

State convention and trade center—Corporation exempt: RCW 67.40.020.

48.30.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. ***(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 123.]

Chapter 48.31 RCW
MERGERS, REHABILITATION, LIQUIDATION, SUPERVISION

Sections

48.31.010 Merger or consolidation.
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48.31.060 Liquidation—Order.
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48.31.010 Merger or consolidation. (1) Subject to the provisions of RCW 48.08.080, relating to the mutualization of stock insurers, RCW 48.09.350, relating to the conversion or reinsurance of mutual insurers, and RCW 48.10.330, relating to the consolidation or conversion of reciprocal insurers, a domestic insurer may merge or consolidate with another insurer, subject to the following conditions:

(a) The plan of merger or consolidation must be submitted to and be approved by the commissioner in advance of the merger or consolidation.

(b) The commissioner shall not approve any such plan unless, after a hearing, pursuant to such notice as the commissioner may require, he or she finds that it is fair, equitable, consistent with law, and that no reasonable objection exists. If the commissioner fails to approve the plan, he or she shall state his or her reasons for such failure in his or her order made on such hearing. The insurers involved in the merger shall bear the expense of the mailing of the notice of hearing and of the order on hearing.

(c) No director, officer, member, or subscriber of any such insurer, except as is expressly provided by the plan of merger or consolidation, shall receive any fee, commission, other compensation or valuable consideration whatsoever, for in any manner aiding, promoting or assisting in the merger or consolidation.

(d) Any merger or consolidation as to an incorporated domestic insurer shall in other respects be governed by the general laws of this state relating to business corporations. Except, that as to domestic mutual insurers, approval by two-thirds of its members who vote thereon pursuant to such notice and procedure as was approved by the commissioner shall constitute approval of the merger or consolidation as respects the insurer's members.

(2) Reinsurance of all or substantially all of the insurance in force of a domestic insurer by another insurer shall be deemed a consolidation for the purposes of this section. [2009 c 549 § 7122; 1973 1st ex.s. c 107 § 3; 1961 c 194 § 11; 1947 c 79 § .31.01; Rem. Supp. 1947 § 45.31.01.]

Severability—1973 1st ex.s. c 107: See note following RCW 48.17.540.

48.31.050 Liquidation—Grounds. The commissioner may apply for an order directing him or her to liquidate the business of a domestic insurer or of the United States branch of an alien insurer having trusteed assets in this state, regard-

less of whether or not there has been a prior order directing him or her to rehabilitate such insurer, upon any of the grounds specified in RCW 48.31.030 or upon any one or more of the following grounds: That the insurer

(1) Has ceased transacting business for a period of one year; or

(2) Is an insolvent insurer and has commenced voluntary liquidation or dissolution, or attempts to commence or prosecute any action or proceeding to liquidate its business or affairs, or to dissolve its corporate charter, or to procure the appointment of a receiver, trustee, custodian, or sequestrator under any law except this code; or

(3) Has not organized or completed its organization and obtained a certificate of authority as an insurer prior to the expiration or revocation of its solicitation permit. [2009 c 549 § 7123; 1947 c 79 § .31.05; Rem. Supp. 1947 § 45.31.05.]

48.31.060 Liquidation—Order. (1) An order to liquidate the business of a domestic insurer shall direct the commissioner forthwith to take possession of the property of the insurer, to liquidate its business, to deal with the insurer's property and business in his or her own name as commissioner or in the name of the insurer as the court may direct, to give notice to all creditors who may have claims against the insurer to present such claims.

(2) The commissioner may apply under this chapter for an order dissolving the corporate existence of a domestic insurer:

(a) Upon his or her application for an order of liquidation of such insurer, or at any time after such order has been granted; or

(b) Upon the grounds specified in item (3) of RCW 48.31.050, regardless of whether an order of liquidation is sought or has been obtained. [2009 c 549 § 7124; 1947 c 79 § .31.06; Rem. Supp. 1947 § 45.31.06.]

48.31.080 Conservation of assets—Foreign insurers. The commissioner may apply for an order directing him or her to conserve the assets within this state of a foreign insurer upon any one or more of the following grounds:

(1) Upon any of the grounds specified in items (1) to (9) inclusive of RCW 48.31.030 and in item (2) of RCW 48.31.050.

(2) That its property has been sequestrated in its domiciliary sovereignty or in any other sovereignty. [2009 c 549 § 7125; 1947 c 79 § .31.08; Rem. Supp. 1947 § 45.31.08.]

48.31.090 Conservation of assets—Alien insurers. The commissioner may apply for an order directing him or her to conserve the assets within this state of an alien insurer upon any one or more of the following grounds:

(1) Upon any of the grounds specified in items (1) to (9) inclusive of RCW 48.31.030 and in item (2) of RCW 48.31.050; or

(2) That the insurer has failed to comply, within the time designated by the commissioner, with an order of the commissioner pursuant to law to make good an impairment of its trusteed funds; or

(3) That the property of the insurer has been sequestrated in its domiciliary sovereignty or elsewhere. [2009 c 549 § 7126; 1947 c 79 § .31.09; Rem. Supp. 1947 § 45.31.09.]

48.31.111 Commencement of delinquency proceeding by commissioner—Jurisdiction of courts. (1) A delinquency proceeding may not be commenced under this chapter by anyone other than the commissioner of this state, and no court has jurisdiction to entertain a proceeding commenced by another person.

(2) No court of this state has jurisdiction to entertain a complaint praying for the dissolution, liquidation, rehabilitation, sequestration, conservation, or receivership of an insurer, or praying for an injunction or restraining order or other relief preliminary to, incidental to, or relating to the proceedings, other than in accordance with this chapter.

(3) In addition to other grounds for jurisdiction provided by the law of this state, a court of this state having jurisdiction of the subject matter has jurisdiction over a person served under the rules of civil procedure or other applicable provisions of law in an action brought by the receiver of a domestic insurer or an alien insurer domiciled in this state:

(a) If the person served is an insurance producer, title insurance agent, surplus line broker, or other person who has written policies of insurance for or has acted in any manner on behalf of an insurer against which a delinquency proceeding has been instituted, in an action resulting from or incident to such a relationship with the insurer;

(b) If the person served is a reinsurer who has entered into a contract of reinsurance with an insurer against which a delinquency proceeding has been instituted, or is an insurance producer of or for the reinsurer, in an action on or incident to the reinsurance contract;

(c) If the person served is or has been an officer, director, manager, trustee, organizer, promoter, or other person in a position of comparable authority or influence over an insurer against which a delinquency proceeding has been instituted, in an action resulting from or incident to such a relationship with the insurer;

(d) If the person served is or was at the time of the institution of the delinquency proceeding against the insurer holding assets in which the receiver claims an interest on behalf of the insurer, in an action concerning the assets; or

(e) If the person served is obligated to the insurer in any way, in an action on or incident to the obligation.

(4) If the court on motion of a party finds that an action should as a matter of substantial justice be tried in a forum outside this state, the court may enter an appropriate order to stay further proceedings on the action in this state. [2009 c 162 § 27; 2008 c 217 § 43; 2003 c 248 § 11; 1993 c 462 § 59.]

Effective date—2009 c 162: See note following RCW 48.03.020.

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

48.31.141 Responsibility for payment of a premium—Earned or unearned premium—Violations—Penalties—Rights of party aggrieved. (1)(a) An insurance producer, title insurance agent, surplus line broker, premium finance company, or any other person, other than the policy

owner or the insured, responsible for the payment of a premium is obligated to pay any unpaid premium for the full policy term due the insurer at the time of the declaration of insolvency, whether earned or unearned, as shown on the records of the insurer. The liquidator also has the right to recover from the person a part of an unearned premium that represents commission of the person. Credits or setoffs or both may not be allowed to an insurance producer, title insurance agent, surplus line broker, or premium finance company for amounts advanced to the insurer by the insurance producer, title insurance agent, surplus line broker, or premium finance company on behalf of, but in the absence of a payment by, the policy owner or the insured.

(b) Notwithstanding (a) of this subsection, the insurance producer, title insurance agent, surplus line broker, premium finance company, or other person is not liable for uncollected unearned premium of the insurer. A presumption exists that the premium as shown on the books of the insurer is collected, and the burden is upon the insurance producer, title insurance agent, surplus line broker, premium finance company, or other person to demonstrate by a preponderance of the evidence that the unearned premium was not actually collected. For purposes of this subsection, "unearned premium" means that portion of an insurance premium covering the unexpired term of the policy or the unexpired period of the policy period.

(c) An insured is obligated to pay any unpaid earned premium due the insurer at the time of the declaration of insolvency, as shown on the records of the insurer.

(2) Upon a violation of this section, the commissioner may pursue either one or both of the following courses of action:

(a) Suspend or revoke or refuse to renew the licenses of the offending party or parties;

(b) Impose a penalty of not more than one thousand dollars for each violation.

(3) Before the commissioner may take an action as set forth in subsection (2) of this section, he or she shall give written notice to the person accused of violating the law, stating specifically the nature of the alleged violation, and fixing a time and place, at least ten days thereafter, when a hearing on the matter shall be held. After the hearing, or upon failure of the accused to appear at the hearing, the commissioner, if he or she finds a violation, shall impose those penalties under subsection (2) of this section that he or she deems advisable.

(4) When the commissioner takes action in any or all of the ways set out in subsection (2) of this section, the party aggrieved has the rights granted under the Administrative Procedure Act, chapter 34.05 RCW. [2009 c 162 § 28; 2008 c 217 § 44; 1993 c 462 § 65.]

Effective date—2009 c 162: See note following RCW 48.03.020.

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

48.31.190 Commencement of proceeding—Venue—Effect of appellate review. (1) Proceedings under this chapter involving a domestic insurer shall be commenced in the superior court for the county in which is located the insurer's home office or, at the election of the commissioner, in the superior court for Thurston county. Proceedings under this chapter involving other insurers shall be commenced in the superior court for Thurston county.

(2) The commissioner shall commence any such proceeding, the attorney general representing him or her, by an application to the court or to any judge thereof, for an order directing the insurer to show cause why the commissioner should not have the relief prayed for.

(3) Upon a showing of an emergency or threat of imminent loss to policyholders of the insurer the court may issue an ex parte order authorizing the commissioner immediately to take over the premises and assets of the insurer, the commissioner then to preserve the status quo, pending a hearing on the order to show cause, which shall be heard as soon as the court calendar permits in preference to other civil cases.

(4) In response to any order to show cause issued under this chapter the insurer shall have the burden of going forward with and producing evidence to show why the relief prayed for by the commissioner is not required.

(5) On the return of such order to show cause, and after a full hearing, the court shall either deny the relief sought in the application or grant the relief sought in the application together with such other relief as the nature of the case and the interest of policyholders, creditors, stockholders, members, subscribers, or the public may require.

(6) No appellate review of a superior court order, entered after a hearing, granting the commissioner's petition to rehabilitate an insurer or to carry out an insolvency proceeding under this chapter, shall stay the action of the commissioner in the discharge of his responsibilities under this chapter, pending a decision by the appellate court in the matter.

(7) In any proceeding under this chapter the commissioner and his or her deputies shall be responsible on their official bonds for the faithful performance of their duties. If the court deems it desirable for the protection of the assets, it may at any time require an additional bond from the commissioner or his or her deputies. [2009 c 549 § 7127; 1993 c 462 § 82; 1988 c 202 § 46; 1969 ex.s. c 241 § 13; 1967 c 150 § 31; 1947 c 79 § .31.19; Rem. Supp. 1947 § 45.31.19.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

Severability—1988 c 202: See note following RCW 2.24.050.

48.31.210 Change of venue. At any time after the commencement of a proceeding under this chapter the commissioner may apply to the court for an order changing the venue of, and removing the proceeding to Thurston county, or to any other county of this state in which he or she deems that such proceeding may be most economically and efficiently conducted. [2009 c 549 § 7128; 1947 c 79 § .31.21; Rem. Supp. 1947 § 45.31.21.]

48.31.220 Deposit of moneys collected. The moneys collected by the commissioner in a proceeding under this chapter, shall be, from time to time, deposited in one or more state or national banks, savings banks, or trust companies, and in the case of the insolvency or voluntary or involuntary liquidation of any such depositary which is an institution organized and supervised under the laws of this state, such deposits shall be entitled to priority of payment on an equality with any other priority given by the banking law of this state.

The commissioner may in his or her discretion deposit such moneys or any part thereof in a national bank or trust company as a trust fund. [2009 c 549 § 7129; 1947 c 79 § .31.22; Rem. Supp. 1947 § 45.31.22.]

48.31.230 Exemption from filing fees. The commissioner shall not be required to pay any fee to any public officer in this state for filing, recording, issuing a transcript or certificate, or authenticating any paper or instrument pertaining to the exercise by the commissioner of any of the powers or duties conferred upon him or her under this chapter, whether or not such paper or instrument be executed by the commissioner or his or her deputies, employees, or attorneys of record and whether or not it is connected with the commencement of an action or proceeding by or against the commissioner, or with the subsequent conduct of such action or proceeding. [2009 c 549 § 7130; 1947 c 79 § .31.23; Rem. Supp. 1947 § 45.31.23.]

48.31.240 Borrowing on pledge of assets. For the purpose of facilitating the rehabilitation, liquidation, conservation or dissolution of an insurer pursuant to this chapter the commissioner may, subject to the approval of the court, borrow money and execute, acknowledge and deliver notes or other evidences of indebtedness therefor and secure the repayment of the same by the mortgage, pledge, assignment, transfer in trust, or hypothecation of any or all of the property whether real, personal or mixed of such insurer, and the commissioner, subject to the approval of the court, shall have power to take any and all other action necessary and proper to consummate any such loans and to provide for the repayment thereof. The commissioner shall be under no obligation personally or in his or her official capacity as commissioner to repay any loan made pursuant to this section. [2009 c 549 § 7131; 1947 c 79 § .31.24; Rem. Supp. 1947 § 45.31.24.]

48.31.270 Voidable transfers. (1) Any transfer of, or lien upon, the property of an insurer which is made or created within four months prior to the granting of an order to show cause under this chapter with the intent of giving to any creditor or of enabling him or her to obtain a greater percentage of his or her debt than any other creditor of the same class and which is accepted by such creditor having reasonable cause to believe that such a preference will occur, shall be voidable.

(2) Every director, officer, employee, stockholder, member, subscriber, and any other person acting on behalf of such insurer who shall be concerned in any such act or deed and every person receiving thereby any property of such insurer or the benefit thereof shall be personally liable therefor and shall be bound to account to the commissioner.

(3) The commissioner as liquidator, rehabilitator or conservator in any proceeding under this chapter, may avoid any transfer of, or lien upon the property of an insurer which any creditor, stockholder, subscriber or member of such insurer might have avoided and may recover the property so transferred unless such person was a bona fide holder for value prior to the date of the granting of an order to show cause under this chapter. Such property or its value may be recovered from anyone who has received it except a bona fide holder for value as above specified. [2009 c 549 § 7132; 1947 c 79 § .31.27; Rem. Supp. 1947 § 45.31.27.]

48.31.290 Offsets. (1) In all cases of mutual debts or mutual credits between the insurer and another person in connection with any action or proceeding under this chapter, such credits and debts shall be set off and the balance only shall be allowed or paid, except as provided in subsection (2) of this section.

(2) No offset shall be allowed in favor of any such person where (a) the obligation of the insurer to such person would not at the date of the entry of any liquidation order, or otherwise, as provided in RCW 48.31.260, entitle him or her to share as a claimant in the assets of the insurer, or (b) the obligation of the insurer to such person was purchased by or transferred to such person with a view of its being used as an offset, or (c) the obligation of such person is to pay an assessment levied against the members of a mutual insurer, or against the subscribers of a reciprocal insurer, or is to pay a balance upon a subscription to the capital stock of a stock insurer. [2009 c 549 § 7133; 1947 c 79 § .31.29; Rem. Supp. 1947 § 45.31.29.]

48.31.310 Time to file claims. (1) If upon the granting of an order of liquidation under this chapter or at any time thereafter during the liquidation proceeding, the insurer shall not be clearly solvent, the court shall after such notice and hearing as it deems proper, make an order declaring the insurer to be insolvent. Thereupon, regardless of any prior notice which may have been given to creditors, the commissioner shall notify all persons who may have claims against such insurer and who have not filed proper proofs thereof, to present the same to him or her, at a place specified in such notice, within four months from the date of the entry of such order, or if the commissioner shall certify that it is necessary, within such longer time as the court shall prescribe. The last day for the filing of proofs of claim shall be specified in the notice. Such notice shall be given in a manner determined by the court.

(2) Proofs of claim may be filed subsequent to the date specified, but no such claim shall share in the distribution of the assets until all allowed claims, proofs of which have been filed before said date, have been paid in full with interest. [2009 c 549 § 7134; 1947 c 79 § .31.31; Rem. Supp. 1947 § 45.31.31.]

48.31.340 Order for payment of assessment. After levy of assessment as provided in RCW 48.31.330, upon the filing of a further detailed report by the commissioner, the court shall issue an order directing each member (if a mutual insurer) or each subscriber (if a reciprocal insurer) if he or she shall not pay the amount assessed against him or her to the commissioner on or before a day to be specified in the order, to show cause why he or she should not be held liable to pay such assessment together with costs as set forth in RCW 48.31.360 and why the commissioner should not have judgment therefor. [2009 c 549 § 7135; 1947 c 79 § .31.34; Rem. Supp. 1947 § 45.31.34.]

48.31.350 Publication, transmittal of assessment order. The commissioner shall cause a notice of such assessment order setting forth a brief summary of the contents of such order to be:

(1) Published in such manner as shall be directed by the court; and

(2) Enclosed in a sealed envelope, addressed and mailed postage prepaid to each member or subscriber liable thereunder at his or her last known address as it appears on the records of the insurer, at least twenty days before the return day of the order to show cause provided for in RCW 48.31.340. [2009 c 549 § 7136; 1947 c 79 § .31.35; Rem. Supp. 1947 § 45.31.35.]

48.31.360 Judgment upon the assessment. (1) On the return day of the order to show cause provided for in RCW 48.31.340 if the member or subscriber does not appear and serve verified objections upon the commissioner, the court shall make an order adjudging that such member or subscriber is liable for the amount of the assessment against him or her together with ten dollars costs, and that the commissioner may have judgment against the member or subscriber therefor.

(2) If on such return day the member or subscriber shall appear and serve verified objections upon the commissioner there shall be a full hearing before the court or a referee to hear and determine, who, after such hearing, shall make an order either negativing the liability of the member or subscriber to pay the assessment or affirming his or her liability to pay the whole or some part thereof together with twenty-five dollars costs and the necessary disbursements incurred at such hearing, and directing that the commissioner in the latter case may have judgment therefor.

(3) A judgment upon any such order shall have the same force and effect, and may be entered and docketed, and may be appealed from as if it were a judgment in an original action brought in the court in which the proceeding is pending. [2009 c 549 § 7137; 1947 c 79 § .31.36; Rem. Supp. 1947 § 45.31.36.]

Chapter 48.32 RCW

WASHINGTON INSURANCE GUARANTY ASSOCIATION ACT

Sections

48.32.080 Duties and powers of the commissioner.
48.32.090 Effect of paid claims.
48.32.110 Prevention of insolvencies.
48.32.150 Immunity.
48.32.170 Termination, distribution of fund.

48.32.080 Duties and powers of the commissioner. (1) The commissioner shall:

(a) Notify the association promptly whenever he or she or any of his or her examiners has, or comes into, possession of any data or information relative to any insurer under his or her jurisdiction for any purpose indicating that such insurer is in or is approaching a condition of impaired assets, imminent insolvency, or insolvency.

(b) Furnish to the association copies of all preliminary and final audits, investigations, memorandums, opinions, and reports relative to any insurer under his or her jurisdiction for any purpose, promptly upon the preparation of any thereof.

(c) Notify the association of the existence of an insolvent insurer not later than three days after he receives notice of the determination of the insolvency. The association shall be entitled to a copy of any complaint seeking an order of liquidation with a finding of insolvency against a member insurer at the same time such complaint is filed with a court of competent jurisdiction.

(d) Upon request of the board of directors, provide the association with a statement of the net direct written premiums of each member insurer.

(2) The commissioner may:

(a) Require that the association notify the insureds of the insolvent insurer and any other interested parties of the determination of insolvency and of their rights under this chapter. Such notification shall be by mail at their last known address, where available, but if sufficient information for notification by mail is not available, notice by publication or in a newspaper of general circulation shall be sufficient.

(b) Suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this state of any member insurer which fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative, the commissioner may levy a fine on any member insurer which fails to pay an assessment when due. Such fine shall not exceed five percent of the unpaid assessment per month, except that no fine shall be less than one hundred dollars per month.

(c) Revoke the designation of any servicing facility if he or she finds claims are being handled unsatisfactorily.

(3) Whenever the commissioner or any of his or her examiners comes into possession of or obtains any data or information indicating that any insurer under his or her jurisdiction for any purpose is in or is approaching a condition of impaired assets, imminent insolvency, or insolvency, he or she shall within fifteen days of having such data or information commence investigation and/or take formal action relative to any such insurer, and in addition within said time shall notify the association of such condition. Upon failure of the commissioner so to act, the association is hereby authorized and directed to act and commence appropriate investigation or proceedings or may at its option refer the matter to the attorney general for appropriate action relative to which the attorney general shall keep the association advised throughout any such action or proceedings.

(4) Any final action or order of the commissioner under this chapter shall be subject to judicial review in a court of competent jurisdiction. [2009 c 549 § 7138; 1975-'76 2nd ex.s. c 109 § 7; 1971 ex.s. c 265 § 8.]

48.32.090 Effect of paid claims. (1) Any person recovering under this chapter shall be deemed to have assigned his or her rights under the policy to the association to the extent of his or her recovery from the association. Every insured or claimant seeking the protection of this chapter shall cooperate with the association to the same extent as such person would have been required to cooperate with the insolvent insurer. The association shall have no cause of action against the insured of the insolvent insurer for any sums it has paid out.

(2) The receiver, liquidator, or statutory successor of an insolvent insurer shall be bound by settlements of covered claims by the association or a similar organization in another state. The court having jurisdiction shall grant such claims priority equal to that which the claimant would have been entitled in the absence of this chapter against the assets of the insolvent insurer. The expenses of the association or similar organization in handling claims shall be accorded the same priority as the liquidator's expenses.

(3) The association shall periodically file with the receiver or liquidator of the insolvent insurer statements of the covered claims paid by the association and estimates of anticipated claims on the association which shall preserve the right of the association against the assets of the insolvent insurer. [2009 c 549 § 7139; 1971 ex.s. c 265 § 9.]

48.32.110 Prevention of insolvencies. To aid in the detection and prevention of insurer insolvencies:

(1) It shall be the duty of the board of directors, upon majority vote, to notify the commissioner of any information indicating any member insurer may be insolvent or in a financial condition hazardous to the policyholders or the public.

(2) The board of directors may, upon majority vote, request that the commissioner order an examination of any member insurer which the board in good faith believes may be in a financial condition hazardous to the policyholders or the public. Within thirty days of the receipt of such request, the commissioner shall begin such examination. The examination may be conducted as a National Association of Insurance Commissioners examination or may be conducted by such persons as the commissioner designates. The cost of such examination shall be paid by the association and the examination report shall be treated as are other examination reports. In no event shall such examination report be released to the board of directors prior to its release to the public, but this shall not preclude the commissioner from complying with subsection (3) of this section. The commissioner shall notify the board of directors when the examination is completed. The request for an examination shall be kept on file by the commissioner but it shall not be open to public inspection prior to the release of the examination report to the public.

(3) It shall be the duty of the commissioner to report to the board of directors when he or she has reasonable cause to believe that any member insurer examined or being examined at the request of the board of directors may be insolvent or in a financial condition hazardous to the policyholders or the public.

(4) The board of directors may, upon majority vote, make reports and recommendations to the commissioner upon any matter germane to the solvency, liquidation, rehabilitation or conservation of any member insurer. Such reports and recommendations shall not be considered public documents.

(5) The board of directors may, upon majority vote, make recommendations to the commissioner for the detection and prevention of insurer insolvencies.

(6) The board of directors shall, at the conclusion of any insurer insolvency in which the association was obligated to pay covered claims, prepare a report on the history and causes of such insolvency, based on the information available to the association, and submit such report to the commissioner. [2009 c 549 § 7140; 1971 ex.s. c 265 § 11.]

48.32.150 Immunity. There shall be no liability on the part of and no cause of action of any nature shall arise against any member insurer, the association or its agents or employees, the board of directors, or the commissioner or his or her representatives for any action taken by them in the performance of their powers and duties under this chapter. [2009 c 549 § 7141; 1971 ex.s. c 265 § 15.]

48.32.170 Termination, distribution of fund. (1) The commissioner shall by order terminate the operation of the Washington insurers insolvency pool as to any kind of insurance afforded by property or casualty insurance policies with respect to which he or she has found, after hearing, that there is in effect a statutory or voluntary plan which:

(a) Is a permanent plan which is adequately funded or for which adequate funding is provided; and

(b) Extends, or will extend to state policyholders and residents protection and benefits with respect to insolvent insurers not substantially less favorable and effective to such policyholders and residents than the protection and benefits provided with respect to such kind of insurance under this chapter.

(2) The commissioner shall by the same such order authorize discontinuance of future payments by insurers to the Washington insurers insolvency pool with respect to the same kinds of insurance: PROVIDED, That assessments and payments shall continue, as necessary, to liquidate covered claims of insurers adjudged insolvent prior to said order and the related expenses not covered by such other plan.

(3) In the event the operation of any account of the Washington insurers insolvency pool shall be so terminated as to all kinds of insurance otherwise within its scope, the pool as soon as possible thereafter shall distribute the balance of the moneys and assets remaining in said account (after discharge of the functions of the pool with respect to prior insurer insolvencies not covered by such other plan, together with related expenses) to the insurers which are then writing in this state policies of the kinds of insurance covered by such account, and which had made payments into such account, pro rata upon the basis of the aggregate of such payments made by the respective insurers to such account during the period of five years next preceding the date of such order. Upon completion of such distribution with respect to all of the accounts specified in RCW 48.32.060, this chapter shall be deemed to have expired. [2009 c 549 § 7142; 1971 ex.s. c 265 § 17.]

Chapter 48.34 RCW

CREDIT LIFE INSURANCE AND CREDIT ACCIDENT AND HEALTH INSURANCE

Sections

48.34.100 Filing policies, notices, riders, etc.—Approval by commissioner—Preexisting policies—Forms.
48.34.120 Debtor's right to furnish and obtain own insurance.

48.34.100 Filing policies, notices, riders, etc.—Approval by commissioner—Preexisting policies—Forms. (1) All policies, certificates of insurance, notices of proposed insurance, applications for insurance, endorsements, and riders delivered or issued for delivery in this state and the schedules of premium rates pertaining thereto shall be filed with the commissioner.

(2) No such policies, certificates of insurance, notices of proposed insurance, applications for insurance, endorsements, or riders shall be used in this state until approved by the commissioner pursuant to RCW 48.18.100 and 48.18.110. In addition to any grounds for disapproval provided therein, the form shall be disapproved both as to credit life and credit accident and health insurance if the benefits provided therein are not reasonable in relation to the premium charged.

(3) If a group policy of credit life insurance or credit accident and health insurance has been delivered in this state before midnight, June 7, 1961, on the first anniversary date following such time the terms of the policy as they apply to persons newly insured thereafter shall be rewritten to conform with the provisions of this chapter.

(4) If a group policy has been or is delivered in another state before or after August 11, 1969, the forms to be filed by the insurer with the commissioner are the group certificates and notices of proposed insurance delivered or issued for delivery in this state. He or she shall approve them if:

(a) They provide the information that would be required if the group policy was delivered in this state; and

(b) The applicable premium rates or charges do not exceed those established by his rules or regulations. [2009 c 549 § 7143; 1969 ex.s. c 241 § 15; 1961 c 219 § 10.]

48.34.120 Debtor's right to furnish and obtain own insurance. When the credit life insurance or credit accident and health insurance is required in connection with any credit transaction, the debtor shall, upon request to the creditor, have the option of furnishing the required amount of insurance through existing policies of insurance owned or controlled by him or her or of procuring and furnishing the required coverage through any insurer authorized to transact an insurance business within this state. [2009 c 549 § 7144; 1961 c 219 § 12.]

Chapter 48.41 RCW
HEALTH INSURANCE COVERAGE ACCESS ACT

Sections

48.41.060 Board powers and duties.
48.41.100 Eligibility for coverage.
48.41.920 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. *(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*

48.41.060 Board powers and duties. (1) The board shall have the general powers and authority granted under the laws of this state to insurance companies, health care service contractors, and health maintenance organizations, licensed or registered to offer or provide the kinds of health coverage defined under this title. In addition thereto, the board shall:

(a) Designate or establish the standard health questionnaire to be used under RCW 48.41.100 and 48.43.018, including the form and content of the standard health questionnaire and the method of its application. The questionnaire must provide for an objective evaluation of an individual's health status by assigning a discreet measure, such as a system of point scoring to each individual. The questionnaire must not contain any questions related to pregnancy, and pregnancy shall not be a basis for coverage by the pool. The questionnaire shall be designed such that it is reasonably expected to identify the eight percent of persons who are the most costly to treat who are under individual coverage in health benefit plans, as defined in RCW 48.43.005, in Washington state or are covered by the pool, if applied to all such persons;

(b) Obtain from a member of the American academy of actuaries, who is independent of the board, a certification that the standard health questionnaire meets the requirements of (a) of this subsection;

(c) Approve the standard health questionnaire and any modifications needed to comply with this chapter. The standard health questionnaire shall be submitted to an actuary for certification, modified as necessary, and approved at least every thirty-six months. The designation and approval of the standard health questionnaire by the board shall not be subject to review and approval by the commissioner. The standard health questionnaire or any modification thereto shall not be used until ninety days after public notice of the approval of the questionnaire or any modification thereto, except that the initial standard health questionnaire approved for use by the board after March 23, 2000, may be used immediately following public notice of such approval;

(d) Establish appropriate rates, rate schedules, rate adjustments, expense allowances, claim reserve formulas and any other actuarial functions appropriate to the operation of the pool. Rates shall not be unreasonable in relation to the coverage provided, the risk experience, and expenses of providing the coverage. Rates and rate schedules may be adjusted for appropriate risk factors such as age and area variation in claim costs and shall take into consideration appropriate risk factors in accordance with established actuarial underwriting practices consistent with Washington state individual plan rating requirements under RCW 48.44.022 and 48.46.064;

(e)(i) Assess members of the pool in accordance with the provisions of this chapter, and make advance interim assessments as may be reasonable and necessary for the organizational or interim operating expenses. Any interim assessments will be credited as offsets against any regular assessments due following the close of the year.

(ii) Self-funded multiple employer welfare arrangements are subject to assessment under this subsection only in the event that assessments are not preempted by the employee retirement income security act of 1974, as amended, 29 U.S.C. Sec. 1001 et seq. The arrangements and the commissioner shall initially request an advisory opinion from the United States department of labor or obtain a declaratory ruling from a federal court on the legality of imposing assessments on these arrangements before imposing the assessment. Once the legality of the assessments has been determined, the multiple employer welfare arrangement certified

by the insurance commissioner must begin payment of these assessments.

(iii) If there has not been a final determination of the legality of these assessments, then beginning on the earlier of (A) the date the fourth multiple employer welfare arrangement has been certified by the insurance commissioner, or (B) April 1, 2006, the arrangement shall deposit the assessments imposed by this subsection into an interest bearing escrow account maintained by the arrangement. Upon a final determination that the assessments are not preempted by the employee retirement income security act of 1974, as amended, 29 U.S.C. Sec. 1001 et seq., all funds in the interest bearing escrow account shall be transferred to the board;

(f) Issue policies of health coverage in accordance with the requirements of this chapter;

(g) Establish procedures for the administration of the premium discount provided under RCW 48.41.200(3)(a)(iii);

(h) Contract with the Washington state health care authority for the administration of the premium discounts provided under RCW 48.41.200(3)(a) (i) and (ii);

(i) Set a reasonable fee to be paid to an insurance producer licensed in Washington state for submitting an acceptable application for enrollment in the pool; and

(j) Provide certification to the commissioner when assessments will exceed the threshold level established in RCW 48.41.037.

(2) In addition thereto, the board may:

(a) Enter into contracts as are necessary or proper to carry out the provisions and purposes of this chapter including the authority, with the approval of the commissioner, to enter into contracts with similar pools of other states for the joint performance of common administrative functions, or with persons or other organizations for the performance of administrative functions;

(b) Sue or be sued, including taking any legal action as necessary to avoid the payment of improper claims against the pool or the coverage provided by or through the pool;

(c) Appoint appropriate legal, actuarial, and other committees as necessary to provide technical assistance in the operation of the pool, policy, and other contract design, and any other function within the authority of the pool; and

(d) Conduct periodic audits to assure the general accuracy of the financial data submitted to the pool, and the board shall cause the pool to have an annual audit of its operations by an independent certified public accountant.

(3) Nothing in this section shall be construed to require or authorize the adoption of rules under chapter 34.05 RCW. [2009 c 555 § 2; 2008 c 217 § 47; 2005 c 7 § 2; 2004 c 260 § 26; 2000 c 79 § 9; 1997 c 337 § 5; 1997 c 231 § 211; 1989 c 121 § 3; 1987 c 431 § 6.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

Effective date—2005 c 7: See note following RCW 48.14.0201.

Severability—Effective date—2004 c 260: See RCW 48.125.900 and 48.125.901.

Effective date—Severability—2000 c 79: See notes following RCW 48.04.010.

Short title—Part headings and captions not law—Severability—Effective dates—1997 c 231: See notes following RCW 48.43.005.

Report on implementation of 1987 c 431: "The board shall report to the commissioner and the appropriate committees of the legislature by April 1, 1990, on the implementation of this act. The report shall include information regarding enrollment, coverage utilization, cost, and any problems with the program and suggest remedies." [1987 c 431 § 26.]

48.41.100 Eligibility for coverage. (1)(a) The following persons who are residents of this state are eligible for pool coverage:

(i) Any person who provides evidence of a carrier's decision not to accept him or her for enrollment in an individual health benefit plan as defined in RCW 48.43.005 based upon, and within ninety days of the receipt of, the results of the standard health questionnaire designated by the board and administered by health carriers under RCW 48.43.018;

(ii) Any person who continues to be eligible for pool coverage based upon the results of the standard health questionnaire designated by the board and administered by the pool administrator pursuant to subsection (3) of this section;

(iii) Any person who resides in a county of the state where no carrier or insurer eligible under chapter 48.15 RCW offers to the public an individual health benefit plan other than a catastrophic health plan as defined in RCW 48.43.005 at the time of application to the pool, and who makes direct application to the pool;

(iv) Any person becoming eligible for medicare before August 1, 2009, who provides evidence of (A) a rejection for medical reasons, (B) a requirement of restrictive riders, (C) an up-rated premium, (D) a preexisting conditions limitation, or (E) lack of access to or for a comprehensive medicare supplemental insurance policy under chapter 48.66 RCW, the effect of any of which is to substantially reduce coverage from that received by a person considered a standard risk by at least one member within six months of the date of application; and

(v) Any person becoming eligible for medicare on or after August 1, 2009, who does not have access to a reasonable choice of comprehensive medicare part C plans, as defined in (b) of this subsection, and who provides evidence of (A) a rejection for medical reasons, (B) a requirement of restrictive riders, (C) an up-rated premium, (D) a preexisting conditions limitation, or (E) lack of access to or for a comprehensive medicare supplemental insurance policy under chapter 48.66 RCW, the effect of any of which is to substantially reduce coverage from that received by a person considered a standard risk by at least one member within six months of the date of application.

(b) For purposes of (a)(v) of this subsection (1), a person does not have access to a reasonable choice of plans unless the person has a choice of health maintenance organization or preferred provider organization medicare part C plans offered by at least three different carriers that have had provider networks in the person's county of residence for at least five years. The plan options must include coverage at least as comprehensive as a plan F medicare supplement plan combined with medicare parts A and B. The plan options must also provide access to adequate and stable provider networks that make up-to-date provider directories easily accessible on the carrier web site, and will provide them in hard copy, if requested. In addition, if no health maintenance organization or preferred provider organization plan includes the health care provider with whom the person has an established care relationship and from whom he or she has received treatment

within the past twelve months, the person does not have reasonable access.

(2) The following persons are not eligible for coverage by the pool:

(a) Any person having terminated coverage in the pool unless (i) twelve months have lapsed since termination, or (ii) that person can show continuous other coverage which has been involuntarily terminated for any reason other than nonpayment of premiums. However, these exclusions do not apply to eligible individuals as defined in section 2741(b) of the federal health insurance portability and accountability act of 1996 (42 U.S.C. Sec. 300gg-41(b));

(b) Any person on whose behalf the pool has paid out two million dollars in benefits;

(c) Inmates of public institutions and those persons who become eligible for medical assistance after June 30, 2008, as defined in RCW 74.09.010. However, these exclusions do not apply to eligible individuals as defined in section 2741(b) of the federal health insurance portability and accountability act of 1996 (42 U.S.C. Sec. 300gg-41(b));

(d) Any person who resides in a county of the state where any carrier or insurer regulated under chapter 48.15 RCW offers to the public an individual health benefit plan other than a catastrophic health plan as defined in RCW 48.43.005 at the time of application to the pool and who does not qualify for pool coverage based upon the results of the standard health questionnaire, or pursuant to subsection (1)(a)(iv) of this section.

(3) When a carrier or insurer regulated under chapter 48.15 RCW begins to offer an individual health benefit plan in a county where no carrier had been offering an individual health benefit plan:

(a) If the health benefit plan offered is other than a catastrophic health plan as defined in RCW 48.43.005, any person enrolled in a pool plan pursuant to subsection (1)(a)(iii) of this section in that county shall no longer be eligible for coverage under that plan pursuant to subsection (1)(a)(iii) of this section, but may continue to be eligible for pool coverage based upon the results of the standard health questionnaire designated by the board and administered by the pool administrator. The pool administrator shall offer to administer the questionnaire to each person no longer eligible for coverage under subsection (1)(a)(iii) of this section within thirty days of determining that he or she is no longer eligible;

(b) Losing eligibility for pool coverage under this subsection (3) does not affect a person's eligibility for pool coverage under subsection (1)(a)(i), (ii), or (iv) of this section; and

(c) The pool administrator shall provide written notice to any person who is no longer eligible for coverage under a pool plan under this subsection (3) within thirty days of the administrator's determination that the person is no longer eligible. The notice shall: (i) Indicate that coverage under the plan will cease ninety days from the date that the notice is dated; (ii) describe any other coverage options, either in or outside of the pool, available to the person; (iii) describe the procedures for the administration of the standard health questionnaire to determine the person's continued eligibility for coverage under subsection (1)(a)(ii) of this section; and (iv) describe the enrollment process for the available options outside of the pool.

(4) The board shall ensure that an independent analysis of the eligibility standards for the pool coverage is conducted, including examining the eight percent eligibility threshold, eligibility for medicaid enrollees and other publicly sponsored enrollees, and the impacts on the pool and the state budget. The board shall report the findings to the legislature by December 1, 2007. [2009 c 555 § 3; 2007 c 259 § 30; 2001 c 196 § 3; 2000 c 79 § 12; 1995 c 34 § 5; 1989 c 121 § 7; 1987 c 431 § 10.]

Contingent effective date—2009 c 555 § 3: "Section 3 of this act takes effect if section 4, chapter 317, Laws of 2008 is null and void on July 26, 2009; otherwise section 3 of this act is null and void." [2009 c 555 § 6.]

Effective date—2007 c 259 § 30: "Section 30 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 2, 2007]." [2007 c 259 § 75.]

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

Effective date—2001 c 196: See note following RCW 48.20.025.

Effective date—Severability—2000 c 79: See notes following RCW 48.04.010.

48.41.920 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. ***(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 124.]

Chapter 48.43 RCW
INSURANCE REFORM

Sections

48.43.017 Organ transplant benefit waiting periods—Prior creditable coverage.
48.43.018 Requirement to complete the standard health questionnaire—Exemptions—Results.
48.43.510 Carrier required to disclose health plan information—Marketing and advertising restrictions—Rules.
48.43.670 Plan or contract renewal—Modification of wellness program.
48.43.680 Lifetime limit on transplants—Definition.
48.43.904 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. *(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*

48.43.017 Organ transplant benefit waiting periods—Prior creditable coverage. (1) For each health benefit plan that is issued or renewed on or after January 1, 2010, a health carrier shall reduce any organ transplant benefit waiting period by the amount of time a covered person had prior creditable coverage. Benefits provided are subject to all

other terms and conditions of the health benefit plan, including but not limited to any applicable coinsurances, deductibles, and copayments.

(2) For purposes of this section, "creditable coverage" means the same as set forth in section 2701 of the federal health insurance portability and accountability act of 1996 (42 U.S.C. Sec. 300gg), as it existed on July 26, 2009, or on such subsequent date as may be provided by the commissioner by rule, consistent with the purposes of this section, and also includes coverage which terminated during the period beginning ninety days and ending sixty-four days before the date of application for the new plan if that coverage would otherwise have qualified as creditable coverage under that federal act. [2009 c 82 § 2.]

Intent—2009 c 82: "It is the intent of the legislature to reduce organ transplant benefit waiting periods for covered persons who have had prior continuous coverage and have changed health carriers or health benefit plans." [2009 c 82 § 1.]

48.43.018 Requirement to complete the standard health questionnaire—Exemptions—Results. (1) Except as provided in (a) through (g) of this subsection, a health carrier may require any person applying for an individual health benefit plan and the health care authority shall require any person applying for nonsubsidized enrollment in the basic health plan to complete the standard health questionnaire designated under chapter 48.41 RCW.

(a) If a person is seeking an individual health benefit plan or enrollment in the basic health plan as a nonsubsidized enrollee due to his or her change of residence from one geographic area in Washington state to another geographic area in Washington state where his or her current health plan is not offered, completion of the standard health questionnaire shall not be a condition of coverage if application for coverage is made within ninety days of relocation.

(b) If a person is seeking an individual health benefit plan or enrollment in the basic health plan as a nonsubsidized enrollee:

(i) Because a health care provider with whom he or she has an established care relationship and from whom he or she has received treatment within the past twelve months is no longer part of the carrier's provider network under his or her existing Washington individual health benefit plan; and

(ii) His or her health care provider is part of another carrier's or a basic health plan managed care system's provider network; and

(iii) Application for a health benefit plan under that carrier's provider network individual coverage or for basic health plan nonsubsidized enrollment is made within ninety days of his or her provider leaving the previous carrier's provider network; then completion of the standard health questionnaire shall not be a condition of coverage.

(c) If a person is seeking an individual health benefit plan or enrollment in the basic health plan as a nonsubsidized enrollee due to his or her having exhausted continuation coverage provided under 29 U.S.C. Sec. 1161 et seq., completion of the standard health questionnaire shall not be a condition of coverage if application for coverage is made within ninety days of exhaustion of continuation coverage. A health carrier or the health care authority as administrator of basic health plan nonsubsidized coverage shall accept an application without a standard health questionnaire from a person currently covered by such continuation coverage if application is made within ninety days prior to the date the continuation coverage would be exhausted and the effective date of the individual coverage applied for is the date the continuation coverage would be exhausted, or within ninety days thereafter.

(d) If a person is seeking an individual health benefit plan or enrollment in the basic health plan as a nonsubsidized enrollee due to a change in employment status that would qualify him or her to purchase continuation coverage provided under 29 U.S.C. Sec. 1161 et seq., but the person's employer is exempt under federal law from the requirement to offer such coverage, completion of the standard health questionnaire shall not be a condition of coverage if: (i) Application for coverage is made within ninety days of a qualifying event as defined in 29 U.S.C. Sec. 1163; and (ii) the person had at least twenty-four months of continuous group coverage immediately prior to the qualifying event. A health carrier shall accept an application without a standard health questionnaire from a person with at least twenty-four months of continuous group coverage if application is made no more than ninety days prior to the date of a qualifying event and the effective date of the individual coverage applied for is the date of the qualifying event, or within ninety days thereafter.

(e) If a person is seeking an individual health benefit plan, completion of the standard health questionnaire shall not be a condition of coverage if: (i) The person had at least twenty-four months of continuous basic health plan coverage under chapter 70.47 RCW immediately prior to disenrollment; and (ii) application for coverage is made within ninety days of disenrollment from the basic health plan. A health carrier shall accept an application without a standard health questionnaire from a person with at least twenty-four months of continuous basic health plan coverage if application is made no more than ninety days prior to the date of disenrollment and the effective date of the individual coverage applied for is the date of disenrollment, or within ninety days thereafter.

(f) If a person is seeking an individual health benefit plan due to a change in employment status that would qualify him or her to purchase continuation coverage provided under 29 U.S.C. Sec. 1161 et seq., completion of the standard health questionnaire is not a condition of coverage if: (i) Application for coverage is made within ninety days of a qualifying event as defined in 29 U.S.C. Sec. 1163; and (ii) the person had at least twenty-four months of continuous group coverage immediately prior to the qualifying event. A health carrier shall accept an application without a standard health questionnaire from a person with at least twenty-four months of continuous group coverage if application is made no more than ninety days prior to the date of a qualifying event and the effective date of the individual coverage applied for is the date of the qualifying event, or within ninety days thereafter.

(g) If a person is seeking an individual health benefit plan due to their terminating continuation coverage under 29 U.S.C. Sec. 1161 et seq., completion of the standard health questionnaire shall not be a condition of coverage if: (i) Application for coverage is made within ninety days of terminating the continuation coverage; and (ii) the person had at

least twenty-four months of continuous group coverage immediately prior to the termination. A health carrier shall accept an application without a standard health questionnaire from a person with at least twenty-four months of continuous group coverage if application is made no more than ninety days prior to the date of termination of the continuation coverage and the effective date of the individual coverage applied for is the date the continuation coverage is terminated, or within ninety days thereafter.

(2) If, based upon the results of the standard health questionnaire, the person qualifies for coverage under the Washington state health insurance pool, the following shall apply:

(a) The carrier may decide not to accept the person's application for enrollment in its individual health benefit plan and the health care authority, as administrator of basic health plan nonsubsidized coverage, shall not accept the person's application for enrollment as a nonsubsidized enrollee; and

(b) Within fifteen business days of receipt of a completed application, the carrier or the health care authority as administrator of basic health plan nonsubsidized coverage shall provide written notice of the decision not to accept the person's application for enrollment to both the person and the administrator of the Washington state health insurance pool. The notice to the person shall state that the person is eligible for health insurance provided by the Washington state health insurance pool, and shall include information about the Washington state health insurance pool and an application for such coverage. If the carrier or the health care authority as administrator of basic health plan nonsubsidized coverage does not provide or postmark such notice within fifteen business days, the application is deemed approved.

(3) If the person applying for an individual health benefit plan: (a) Does not qualify for coverage under the Washington state health insurance pool based upon the results of the standard health questionnaire; (b) does qualify for coverage under the Washington state health insurance pool based upon the results of the standard health questionnaire and the carrier elects to accept the person for enrollment; or (c) is not required to complete the standard health questionnaire designated under this chapter under subsection (1)(a) or (b) of this section, the carrier or the health care authority as administrator of basic health plan nonsubsidized coverage, whichever entity administered the standard health questionnaire, shall accept the person for enrollment if he or she resides within the carrier's or the basic health plan's service area and provide or assure the provision of all covered services regardless of age, sex, family structure, ethnicity, race, health condition, geographic location, employment status, socioeconomic status, other condition or situation, or the provisions of RCW 49.60.174(2). The commissioner may grant a temporary exemption from this subsection if, upon application by a health carrier, the commissioner finds that the clinical, financial, or administrative capacity to serve existing enrollees will be impaired if a health carrier is required to continue enrollment of additional eligible individuals. [2009 c 42 § 1. Prior: 2007 c 259 § 37; 2007 c 80 § 13; 2004 c 244 § 3; 2001 c 196 § 8; 2000 c 80 § 4; 2000 c 79 § 21.]

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

Application—2004 c 244: See note following RCW 48.21.045.

Effective date—2001 c 196: See note following RCW 48.20.025.

Effective date—Severability—2000 c 79: See notes following RCW 48.04.010.

48.43.510 Carrier required to disclose health plan information—Marketing and advertising restrictions—Rules. (1) A carrier that offers a health plan may not offer to sell a health plan to an enrollee or to any group representative, agent, employer, or enrollee representative without first offering to provide, and providing upon request, the following information before purchase or selection:

(a) A listing of covered benefits, including prescription drug benefits, if any, a copy of the current formulary, if any is used, definitions of terms such as generic versus brand name, and policies regarding coverage of drugs, such as how they become approved or taken off the formulary, and how consumers may be involved in decisions about benefits;

(b) A listing of exclusions, reductions, and limitations to covered benefits, and any definition of medical necessity or other coverage criteria upon which they may be based;

(c) A statement of the carrier's policies for protecting the confidentiality of health information;

(d) A statement of the cost of premiums and any enrollee cost-sharing requirements;

(e) A summary explanation of the carrier's grievance process;

(f) A statement regarding the availability of a point-of-service option, if any, and how the option operates; and

(g) A convenient means of obtaining lists of participating primary care and specialty care providers, including disclosure of network arrangements that restrict access to providers within any plan network. The offer to provide the information referenced in this subsection (1) must be clearly and prominently displayed on any information provided to any prospective enrollee or to any prospective group representative, agent, employer, or enrollee representative.

(2) Upon the request of any person, including a current enrollee, prospective enrollee, or the insurance commissioner, a carrier must provide written information regarding any health care plan it offers, that includes the following written information:

(a) Any documents, instruments, or other information referred to in the medical coverage agreement;

(b) A full description of the procedures to be followed by an enrollee for consulting a provider other than the primary care provider and whether the enrollee's primary care provider, the carrier's medical director, or another entity must authorize the referral;

(c) Procedures, if any, that an enrollee must first follow for obtaining prior authorization for health care services;

(d) A written description of any reimbursement or payment arrangements, including, but not limited to, capitation provisions, fee-for-service provisions, and health care delivery efficiency provisions, between a carrier and a provider or network;

(e) Descriptions and justifications for provider compensation programs, including any incentives or penalties that are intended to encourage providers to withhold services or minimize or avoid referrals to specialists;

(f) An annual accounting of all payments made by the carrier which have been counted against any payment limita-

tions, visit limitations, or other overall limitations on a person's coverage under a plan;

(g) A copy of the carrier's grievance process for claim or service denial and for dissatisfaction with care; and

(h) Accreditation status with one or more national managed care accreditation organizations, and whether the carrier tracks its health care effectiveness performance using the health employer data information set (HEDIS), whether it publicly reports its HEDIS data, and how interested persons can access its HEDIS data.

(3) Each carrier shall provide to all enrollees and prospective enrollees a list of available disclosure items.

(4) Nothing in this section requires a carrier or a health care provider to divulge proprietary information to an enrollee, including the specific contractual terms and conditions between a carrier and a provider.

(5) No carrier may advertise or market any health plan to the public as a plan that covers services that help prevent illness or promote the health of enrollees unless it:

(a) Provides all clinical preventive health services provided by the basic health plan, authorized by chapter 70.47 RCW;

(b) Monitors and reports annually to enrollees on standardized measures of health care and satisfaction of all enrollees in the health plan. The state department of health shall recommend appropriate standardized measures for this purpose, after consideration of national standardized measurement systems adopted by national managed care accreditation organizations and state agencies that purchase managed health care services; and

(c) Makes available upon request to enrollees its integrated plan to identify and manage the most prevalent diseases within its enrolled population, including cancer, heart disease, and stroke.

(6) No carrier may preclude or discourage its providers from informing an enrollee of the care he or she requires, including various treatment options, and whether in the providers' view such care is consistent with the plan's health coverage criteria, or otherwise covered by the enrollee's medical coverage agreement with the carrier. No carrier may prohibit, discourage, or penalize a provider otherwise practicing in compliance with the law from advocating on behalf of an enrollee with a carrier. Nothing in this section shall be construed to authorize a provider to bind a carrier to pay for any service.

(7) No carrier may preclude or discourage enrollees or those paying for their coverage from discussing the comparative merits of different carriers with their providers. This prohibition specifically includes prohibiting or limiting providers participating in those discussions even if critical of a carrier.

(8) Each carrier must communicate enrollee information required in chapter 5, Laws of 2000 by means that ensure that a substantial portion of the enrollee population can make use of the information. Carriers may implement alternative, efficient methods of communication to ensure enrollees have access to information including, but not limited to, web site alerts, postcard mailings, and electronic communication in lieu of printed materials.

(9) The commissioner may adopt rules to implement this section. In developing rules to implement this section, the commissioner shall consider relevant standards adopted by national managed care accreditation organizations and state agencies that purchase managed health care services, as well as opportunities to reduce administrative costs included in health plans. [2009 c 304 § 1; 2000 c 5 § 6.]

Application—Short title—Captions not law—Construction—Severability—Application to contracts—Effective dates—2000 c 5: See notes following RCW 48.43.500.

48.43.670 Plan or contract renewal—Modification of wellness program. Upon the renewal date of an individual or group health benefit plan or contract containing health benefits, the modification of a wellness program, as defined in 45 CFR 146.121(f), included in such a plan or contract shall not be considered a cancellation or nonrenewal of such plan or contract. [2009 c 329 § 3.]

48.43.680 Lifetime limit on transplants—Definition. (1) A health benefit plan that is issued or renewed on or after January 1, 2010, and that provides coverage for organ and tissue transplants, may not permit a separate lifetime limit on transplants of any less than three hundred fifty thousand dollars. The lifetime limit on transplants shall apply from one day prior to the date of the transplant or the date of hospital admission, for a patient who receives a transplant during the course of a longer hospital stay, through one hundred days after the transplant. Donor-related services may apply to the lifetime limit on transplants any time. The major medical lifetime limit shall apply to health care services provided before and after this time period. Benefits provided are subject to all other terms and conditions of the health benefit plan, including but not limited to any applicable coinsurances, deductibles, and copayments.

(2) "Organ and tissue transplant" means the same as defined under the applicable health benefit plan. [2009 c 487 § 1.]

48.43.904 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. ***(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 125.]

Chapter 48.44 RCW
HEALTH CARE SERVICES

Sections

48.44.023 Health plan benefits for small employers—Coverage—Exemption from statutory requirements—Premium rates—Requirements for providing coverage for small employers.
48.44.040 Registration with commissioner—Fee.
48.44.090 Refusal to register corporate, etc., contractor if name confusing with existing contractor or insurance company.
48.44.145 Examination of contractors—Duties of contractor, powers of commissioner—Independent audit reports.
48.44.160 Revocation, suspension, refusal of registration—Hearing—Cease and desist orders, injunctive action—Grounds.
48.44.170 Hearings and appeals.
48.44.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. *(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*

48.44.023 Health plan benefits for small employers—Coverage—Exemption from statutory requirements—Premium rates—Requirements for providing coverage for small employers. (1)(a) A health care services contractor offering any health benefit plan to a small employer, either directly or through an association or member-governed group formed specifically for the purpose of purchasing health care, may offer and actively market to the small employer a health benefit plan featuring a limited schedule of covered health care services. Nothing in this subsection shall preclude a contractor from offering, or a small employer from purchasing, other health benefit plans that may have more comprehensive benefits than those included in the product offered under this subsection. A contractor offering a health benefit plan under this subsection shall clearly disclose all covered benefits to the small employer in a brochure filed with the commissioner.

(b) A health benefit plan offered under this subsection shall provide coverage for hospital expenses and services rendered by a physician licensed under chapter 18.57 or 18.71 RCW but is not subject to the requirements of RCW 48.44.225, 48.44.240, 48.44.245, 48.44.290, 48.44.300, 48.44.310, 48.44.320, 48.44.325, 48.44.330, 48.44.335, 48.44.344, 48.44.360, 48.44.400, 48.44.440, 48.44.450, and 48.44.460.

(2) Nothing in this section shall prohibit a health care service contractor from offering, or a purchaser from seeking, health benefit plans with benefits in excess of the health benefit plan offered under subsection (1) of this section. All forms, policies, and contracts shall be submitted for approval to the commissioner, and the rates of any plan offered under this section shall be reasonable in relation to the benefits thereto.

(3) Premium rates for health benefit plans for small employers as defined in this section shall be subject to the following provisions:

(a) The contractor shall develop its rates based on an adjusted community rate and may only vary the adjusted community rate for:

(i) Geographic area;

(ii) Family size;

(iii) Age; and

(iv) Wellness activities.

(b) The adjustment for age in (a)(iii) of this subsection may not use age brackets smaller than five-year increments, which shall begin with age twenty and end with age sixty-five. Employees under the age of twenty shall be treated as those age twenty.

(c) The contractor shall be permitted to develop separate rates for individuals age sixty-five or older for coverage for which medicare is the primary payer and coverage for which medicare is not the primary payer. Both rates shall be subject to the requirements of this subsection (3).

(d) The permitted rates for any age group shall be no more than four hundred twenty-five percent of the lowest rate for all age groups on January 1, 1996, four hundred percent on January 1, 1997, and three hundred seventy-five percent on January 1, 2000, and thereafter.

(e) A discount for wellness activities shall be permitted to reflect actuarially justified differences in utilization or cost attributed to such programs. Up to a twenty percent variance may be allowed for small employers that develop and implement a wellness program or activities that directly improve employee wellness. Employers shall document program activities with the carrier and may, after three years of implementation, request a reduction in premiums based on improved employee health and wellness. While carriers may review the employer's claim history when making a determination regarding whether the employer's wellness program has improved employee health, the carrier may not use maternity or prevention services claims to deny the employer's request. Carriers may consider issues such as improved productivity or a reduction in absenteeism due to illness if submitted by the employer for consideration. Interested employers may also work with the carrier to develop a wellness program and a means to track improved employee health.

(f) The rate charged for a health benefit plan offered under this section may not be adjusted more frequently than annually except that the premium may be changed to reflect:

(i) Changes to the enrollment of the small employer;

(ii) Changes to the family composition of the employee;

(iii) Changes to the health benefit plan requested by the small employer; or

(iv) Changes in government requirements affecting the health benefit plan.

(g) Rating factors shall produce premiums for identical groups that differ only by the amounts attributable to plan design, with the exception of discounts for health improvement programs.

(h) For the purposes of this section, a health benefit plan that contains a restricted network provision shall not be considered similar coverage to a health benefit plan that does not contain such a provision, provided that the restrictions of benefits to network providers result in substantial differences in claims costs. A carrier may develop its rates based on claims costs due to network provider reimbursement schedules or type of network. This subsection does not restrict or enhance the portability of benefits as provided in RCW 48.43.015.

(i) Adjusted community rates established under this section shall pool the medical experience of all groups purchasing coverage, including the small group participants in the health insurance partnership established in RCW 70.47A.030. However, annual rate adjustments for each small group health benefit plan may vary by up to plus or minus four percentage points from the overall adjustment of

a carrier's entire small group pool, such overall adjustment to be approved by the commissioner, upon a showing by the carrier, certified by a member of the American academy of actuaries that: (i) The variation is a result of deductible leverage, benefit design, or provider network characteristics; and (ii) for a rate renewal period, the projected weighted average of all small group benefit plans will have a revenue neutral effect on the carrier's small group pool. Variations of greater than four percentage points are subject to review by the commissioner, and must be approved or denied within sixty days of submittal. A variation that is not denied within sixty days shall be deemed approved. The commissioner must provide to the carrier a detailed actuarial justification for any denial within thirty days of the denial.

(j) For health benefit plans purchased through the health insurance partnership established in chapter 70.47A RCW:

(i) Any surcharge established pursuant to RCW 70.47A.030(2)(e) shall be applied only to health benefit plans purchased through the health insurance partnership; and

(ii) Risk adjustment or reinsurance mechanisms may be used by the health insurance partnership program to redistribute funds to carriers participating in the health insurance partnership based on differences in risk attributable to individual choice of health plans or other factors unique to health insurance partnership participation. Use of such mechanisms shall be limited to the partnership program and will not affect small group health plans offered outside the partnership.

(4) Nothing in this section shall restrict the right of employees to collectively bargain for insurance providing benefits in excess of those provided herein.

(5)(a) Except as provided in this subsection, requirements used by a contractor in determining whether to provide coverage to a small employer shall be applied uniformly among all small employers applying for coverage or receiving coverage from the carrier.

(b) A contractor shall not require a minimum participation level greater than:

(i) One hundred percent of eligible employees working for groups with three or less employees; and

(ii) Seventy-five percent of eligible employees working for groups with more than three employees.

(c) In applying minimum participation requirements with respect to a small employer, a small employer shall not consider employees or dependents who have similar existing coverage in determining whether the applicable percentage of participation is met.

(d) A contractor may not increase any requirement for minimum employee participation or modify any requirement for minimum employer contribution applicable to a small employer at any time after the small employer has been accepted for coverage.

(e) Minimum participation requirements and employer premium contribution requirements adopted by the health insurance partnership board under RCW 70.47A.110 shall apply only to the employers and employees who purchase health benefit plans through the health insurance partnership.

(6) A contractor must offer coverage to all eligible employees of a small employer and their dependents. A contractor may not offer coverage to only certain individuals or dependents in a small employer group or to only part of the group. A contractor may not modify a health plan with respect to a small employer or any eligible employee or dependent, through riders, endorsements or otherwise, to restrict or exclude coverage or benefits for specific diseases, medical conditions, or services otherwise covered by the plan. [2009 c 131 § 2; 2008 c 143 § 7; 2007 c 260 § 8; 2004 c 244 § 7; 1995 c 265 § 16; 1990 c 187 § 3.]

Application—2004 c 244: See note following RCW 48.21.045.

Captions not law—Effective dates—Savings—Severability—1995 c 265: See notes following RCW 70.47.015.

Finding—Intent—Severability—1990 c 187: See notes following RCW 48.21.045.

48.44.040 Registration with commissioner—Fee. Every health care service contractor who or which enters into agreements which require prepayment for health care services shall register with the insurance commissioner on forms to be prescribed and provided by him or her. Such registrants shall state their name, address, type of organization, area of operation, type or types of health care services provided, and such other information as may reasonably be required by the insurance commissioner and shall file with such registration a copy of all contracts being offered and a schedule of all rates charged. No registrant shall change any rates, modify any contract, or offer any new contract, until he or she has filed a copy of the changed rate schedule, modified contract, or new contract with the insurance commissioner. The insurance commissioner shall charge a fee of ten dollars for the filing of each original registration statement and may require each registrant to file a current reregistration statement annually thereafter. [2009 c 549 § 7145; 1947 c 268 § 4; Rem. Supp. 1947 § 6131-13.]

48.44.090 Refusal to register corporate, etc., contractor if name confusing with existing contractor or insurance company. The insurance commissioner shall refuse to accept the registration of any corporation, cooperative group, or association seeking to act as a health care service contractor if, in his or her discretion, the insurance commissioner deems that the name of the corporation, cooperative group, or association would be confused with the name of an existing registered health care service contractor or authorized insurance company. [2009 c 549 § 7146; 1961 c 197 § 6.]

48.44.145 Examination of contractors—Duties of contractor, powers of commissioner—Independent audit reports. (1) The commissioner may make an examination of the operations of any health care service contractor as often as he or she deems necessary in order to carry out the purposes of this chapter.

(2) Every health care service contractor shall submit its books and records relating to its operation for financial condition and market conduct examinations and in every way facilitate them. For the purpose of examinations, the commissioner may issue subpoenas, administer oaths, and examine the officers and principals of the health care service contractor.

(3) The commissioner may elect to accept and rely on audit reports made by an independent certified public accountant for the health care service contractor in the course of that part of the commissioner's examination covering the same general subject matter as the audit. The commissioner

may incorporate the audit report in his or her report of the examination.

(4) Whenever any health care service contractor applies for initial admission, the commissioner may make, or cause to be made, an examination of the applicant's business and affairs. Whenever such an examination is made, all of the provisions of chapter 48.03 RCW not inconsistent with this chapter shall be applicable. In lieu of making an examination himself or herself the commissioner may, in the case of a foreign health care service contractor, accept an examination report of the applicant by the regulatory official in its state of domicile. [2009 c 549 § 7147; 1986 c 296 § 8; 1983 c 63 § 1; 1969 c 115 § 12.]

Severability—Effective date—1986 c 296: See notes following RCW 48.14.020.

48.44.160 Revocation, suspension, refusal of registration—Hearing—Cease and desist orders, injunctive action—Grounds. The insurance commissioner may, subject to a hearing if one is demanded pursuant to chapters 48.04 and 34.05 RCW, revoke, suspend, or refuse to accept or renew registration from any health care service contractor, or he or she may issue a cease and desist order, or bring an action in any court of competent jurisdiction to enjoin a health care service contractor from doing further business in this state, if such health care service contractor:

(1) Fails to comply with any provision of chapter 48.44 RCW or any proper order or regulation of the commissioner.

(2) Is found by the commissioner to be in such financial condition that its further transaction of business in this state would jeopardize the payment of claims and refunds to subscribers.

(3) Has refused to remove or discharge a director or officer who has been convicted of any crime involving fraud, dishonesty, or like moral turpitude, after written request by the commissioner for such removal, and expiration of a reasonable time therefor as specified in such request.

(4) Usually compels claimants under contracts either to accept less than the amount due them or to bring suit against it to secure full payment of the amount due.

(5) Is affiliated with and under the same general management, or interlocking directorate, or ownership as another health care contractor which operates in this state without having registered therefor, except as is permitted by this chapter.

(6) Refuses to be examined, or if its directors, officers, employees or representatives refuse to submit to examination or to produce its accounts, records, and files for examination by the commissioner when required, or refuse to perform any legal obligation relative to the examination.

(7) Fails to pay any final judgment rendered against it in this state upon any contract, bond, recognizance, or undertaking issued or guaranteed by it, within thirty days after the judgment became final or within thirty days after time for taking an appeal has expired, or within thirty days after dismissal of an appeal before final determination, whichever date is the later.

(8) Is found by the commissioner, after investigation or upon receipt of reliable information, to be managed by persons, whether by its directors, officers, or by any other means, who are incompetent or untrustworthy or so lacking in health care contracting or related managerial experience as to make the operation hazardous to the subscribing public; or that there is good reason to believe it is affiliated directly or indirectly through ownership, control, or other business relations, with any person or persons whose business operations are or have been marked, to the detriment of policyholders or stockholders, or investors or creditors or subscribers or of the public, by bad faith or by manipulation of assets, or of accounts, or of reinsurance. [2009 c 549 § 7148; 1988 c 248 § 19; 1973 1st ex.s. c 65 § 2; 1969 c 115 § 3; 1961 c 197 § 13.]

48.44.170 Hearings and appeals. For the purposes of this chapter, the insurance commissioner shall be subject to and may avail himself or herself of the provisions of chapter 48.04 RCW, which relate to hearings and appeals. [2009 c 549 § 7149; 1961 c 197 § 14.]

48.44.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. ***(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 126.]

Chapter 48.46 RCW
HEALTH MAINTENANCE ORGANIZATIONS

Sections

48.46.040 Certificate of registration—Issuance—Grounds for refusal—Name restrictions—Inspection and review of facilities.
48.46.066 Health plan benefits for small employers—Coverage—Exemption from statutory requirements—Premium rates—Requirements for providing coverage for small employers.
48.46.110 Name restrictions—Discrimination—Recovery of costs of health care services participant not entitled to.
48.46.120 Examination of health maintenance organizations—Duties of organizations, powers of commissioner—Independent audit reports.
48.46.200 Rules and regulations.
48.46.240 Funded reserve requirements.
48.46.930 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. *(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*

48.46.040 Certificate of registration—Issuance—Grounds for refusal—Name restrictions—Inspection and review of facilities. The commissioner shall issue a certificate of registration to the applicant within sixty days of such filing unless he or she notifies the applicant within such time that such application is not complete and the reasons therefor; or that he or she is not satisfied that:

(1) The basic organizational document of the applicant permits the applicant to conduct business as a health maintenance organization;

(2) The organization has demonstrated the intent and ability to assure that comprehensive health care services will be provided in a manner to assure both their availability and accessibility;

(3) The organization is financially responsible and may be reasonably expected to meet its obligations to its enrolled participants. In making this determination, the commissioner shall consider among other relevant factors:

(a) Any agreements with an insurer, a medical or hospital service bureau, a government agency or any other organization paying or insuring payment for health care services;

(b) Any agreements with providers for the provision of health care services;

(c) Any arrangements for liability and malpractice insurance coverage; and

(d) Adequate procedures to be implemented to meet the protection against insolvency requirements in RCW 48.46.245;

(4) The procedures for offering health care services and offering or terminating contracts with enrolled participants are reasonable and equitable in comparison with prevailing health insurance subscription practices and health maintenance organization enrollment procedures; and, that

(5) Procedures have been established to:

(a) Monitor the quality of care provided by such organization, including, as a minimum, procedures for internal peer review;

(b) Resolve complaints and grievances initiated by enrolled participants in accordance with RCW 48.46.010 and 48.46.100;

(c) Offer enrolled participants an opportunity to participate in matters of policy and operation in accordance with RCW 48.46.020(7) and 48.46.070.

No person to whom a certificate of registration has not been issued, except a health maintenance organization certified by the secretary of the department of health and human services, pursuant to Public Law 93-222 or its successor, shall use the words "health maintenance organization" or the initials "HMO" in its name, contracts, or literature. Persons who are contracting with, operating in association with, recruiting enrolled participants for, or otherwise authorized by a health maintenance organization possessing a certificate of registration to act on its behalf may use the terms "health maintenance organization" or "HMO" for the limited purpose of denoting or explaining their relationship to such health maintenance organization.

The department of health, at the request of the insurance commissioner, shall inspect and review the facilities of every applicant health maintenance organization to determine that such facilities are reasonably adequate to provide the health care services offered in their contracts. If the commissioner has information to indicate that such facilities fail to continue to be adequate to provide the health care services offered, the department of health, upon request of the insurance commissioner, shall reinspect and review the facilities and report to the insurance commissioner as to their adequacy or inadequacy. [2009 c 549 § 7150; 1990 c 119 § 3; 1989 1st ex.s. c 9 § 223; 1983 c 106 § 3; 1975 1st ex.s. c 290 § 5.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

48.46.066 Health plan benefits for small employers—Coverage—Exemption from statutory requirements—Premium rates—Requirements for providing coverage for small employers. (1)(a) A health maintenance organization offering any health benefit plan to a small employer, either directly or through an association or member-governed group formed specifically for the purpose of purchasing health care, may offer and actively market to the small employer a health benefit plan featuring a limited schedule of covered health care services. Nothing in this subsection shall preclude a health maintenance organization from offering, or a small employer from purchasing, other health benefit plans that may have more comprehensive benefits than those included in the product offered under this subsection. A health maintenance organization offering a health benefit plan under this subsection shall clearly disclose all the covered benefits to the small employer in a brochure filed with the commissioner.

(b) A health benefit plan offered under this subsection shall provide coverage for hospital expenses and services rendered by a physician licensed under chapter 18.57 or 18.71 RCW but is not subject to the requirements of RCW 48.46.275, 48.46.280, 48.46.285, 48.46.350, 48.46.355, 48.46.375, 48.46.440, 48.46.480, 48.46.510, 48.46.520, and 48.46.530.

(2) Nothing in this section shall prohibit a health maintenance organization from offering, or a purchaser from seeking, health benefit plans with benefits in excess of the health benefit plan offered under subsection (1) of this section. All forms, policies, and contracts shall be submitted for approval to the commissioner, and the rates of any plan offered under this section shall be reasonable in relation to the benefits thereto.

(3) Premium rates for health benefit plans for small employers as defined in this section shall be subject to the following provisions:

(a) The health maintenance organization shall develop its rates based on an adjusted community rate and may only vary the adjusted community rate for:

(i) Geographic area;

(ii) Family size;

(iii) Age; and

(iv) Wellness activities.

(b) The adjustment for age in (a)(iii) of this subsection may not use age brackets smaller than five-year increments, which shall begin with age twenty and end with age sixty-five. Employees under the age of twenty shall be treated as those age twenty.

(c) The health maintenance organization shall be permitted to develop separate rates for individuals age sixty-five or older for coverage for which medicare is the primary payer and coverage for which medicare is not the primary payer. Both rates shall be subject to the requirements of this subsection (3).

(d) The permitted rates for any age group shall be no more than four hundred twenty-five percent of the lowest rate for all age groups on January 1, 1996, four hundred percent

on January 1, 1997, and three hundred seventy-five percent on January 1, 2000, and thereafter.

(e) A discount for wellness activities shall be permitted to reflect actuarially justified differences in utilization or cost attributed to such programs. Up to a twenty percent variance may be allowed for small employers that develop and implement a wellness program or activities that directly improve employee wellness. Employers shall document program activities with the carrier and may, after three years of implementation, request a reduction in premiums based on improved employee health and wellness. While carriers may review the employer's claim history when making a determination regarding whether the employer's wellness program has improved employee health, the carrier may not use maternity or prevention services claims to deny the employer's request. Carriers may consider issues such as improved productivity or a reduction in absenteeism due to illness if submitted by the employer for consideration. Interested employers may also work with the carrier to develop a wellness program and a means to track improved employee health.

(f) The rate charged for a health benefit plan offered under this section may not be adjusted more frequently than annually except that the premium may be changed to reflect:

(i) Changes to the enrollment of the small employer;

(ii) Changes to the family composition of the employee;

(iii) Changes to the health benefit plan requested by the small employer; or

(iv) Changes in government requirements affecting the health benefit plan.

(g) Rating factors shall produce premiums for identical groups that differ only by the amounts attributable to plan design, with the exception of discounts for health improvement programs.

(h) For the purposes of this section, a health benefit plan that contains a restricted network provision shall not be considered similar coverage to a health benefit plan that does not contain such a provision, provided that the restrictions of benefits to network providers result in substantial differences in claims costs. A carrier may develop its rates based on claims costs due to network provider reimbursement schedules or type of network. This subsection does not restrict or enhance the portability of benefits as provided in RCW 48.43.015.

(i) Adjusted community rates established under this section shall pool the medical experience of all groups purchasing coverage, including the small group participants in the health insurance partnership established in RCW 70.47A.030. However, annual rate adjustments for each small group health benefit plan may vary by up to plus or minus four percentage points from the overall adjustment of a carrier's entire small group pool, such overall adjustment to be approved by the commissioner, upon a showing by the carrier, certified by a member of the American academy of actuaries that: (i) The variation is a result of deductible leverage, benefit design, or provider network characteristics; and (ii) for a rate renewal period, the projected weighted average of all small group benefit plans will have a revenue neutral effect on the carrier's small group pool. Variations of greater than four percentage points are subject to review by the commissioner, and must be approved or denied within sixty days of submittal. A variation that is not denied within sixty days shall be deemed approved. The commissioner must provide to the carrier a detailed actuarial justification for any denial within thirty days of the denial.

(j) For health benefit plans purchased through the health insurance partnership established in chapter 70.47A RCW:

(i) Any surcharge established pursuant to RCW 70.47A.030(2)(e) shall be applied only to health benefit plans purchased through the health insurance partnership; and

(ii) Risk adjustment or reinsurance mechanisms may be used by the health insurance partnership program to redistribute funds to carriers participating in the health insurance partnership based on differences in risk attributable to individual choice of health plans or other factors unique to health insurance partnership participation. Use of such mechanisms shall be limited to the partnership program and will not affect small group health plans offered outside the partnership.

(4) Nothing in this section shall restrict the right of employees to collectively bargain for insurance providing benefits in excess of those provided herein.

(5)(a) Except as provided in this subsection, requirements used by a health maintenance organization in determining whether to provide coverage to a small employer shall be applied uniformly among all small employers applying for coverage or receiving coverage from the carrier.

(b) A health maintenance organization shall not require a minimum participation level greater than:

(i) One hundred percent of eligible employees working for groups with three or less employees; and

(ii) Seventy-five percent of eligible employees working for groups with more than three employees.

(c) In applying minimum participation requirements with respect to a small employer, a small employer shall not consider employees or dependents who have similar existing coverage in determining whether the applicable percentage of participation is met.

(d) A health maintenance organization may not increase any requirement for minimum employee participation or modify any requirement for minimum employer contribution applicable to a small employer at any time after the small employer has been accepted for coverage.

(e) Minimum participation requirements and employer premium contribution requirements adopted by the health insurance partnership board under RCW 70.47A.110 shall apply only to the employers and employees who purchase health benefit plans through the health insurance partnership.

(6) A health maintenance organization must offer coverage to all eligible employees of a small employer and their dependents. A health maintenance organization may not offer coverage to only certain individuals or dependents in a small employer group or to only part of the group. A health maintenance organization may not modify a health plan with respect to a small employer or any eligible employee or dependent, through riders, endorsements or otherwise, to restrict or exclude coverage or benefits for specific diseases, medical conditions, or services otherwise covered by the plan. [2009 c 131 § 3; 2008 c 143 § 8; 2007 c 260 § 9; 2004 c 244 § 9; 1995 c 265 § 18; 1990 c 187 § 4.]

Application—2004 c 244: See note following RCW 48.21.045.

Captions not law—Effective dates—Savings—Severability—1995 c 265: See notes following RCW 70.47.015.

Finding—Intent—Severability—1990 c 187: See notes following RCW 48.21.045.

48.46.110 Name restrictions—Discrimination—Recovery of costs of health care services participant not entitled to. (1) No health maintenance organization may refer to itself in its name or advertising with any of the words: "insurance", "casualty", "surety", "mutual", or any other words descriptive of the insurance, casualty, or surety business, or deceptively similar to the name or description of any insurance or surety corporation or health care service contractor or other health maintenance organization doing business in this state.

(2) No health maintenance organization, nor any health care facility or provider with which such organization has contracted to provide health care services, shall discriminate against any person from whom or on whose behalf, payment to meet the required charge is available, with regard to enrollment, disenrollment, or the provision of health care services, on the basis of such person's race, color, sex, religion, place of residence if there is reasonable access to the facility of the health maintenance organization, socioeconomic status, or status as a recipient of medicare under Title XVIII of the Social Security Act, 42 U.S.C. section 1396, et seq.

(3) Where a health maintenance organization determines that an enrolled participant has received health care services to which such enrolled participant is not entitled under the terms of his or her health maintenance agreement, neither such organization, nor any health care facility or provider with which such organization has contracted to provide health care services, shall have recourse against such enrolled participant for any amount above the actual cost of providing such service, if any, specified in such agreement, unless the enrolled participant or a member of his or her family has given or withheld information to the health maintenance organization, the effect of which is to mislead or misinform the health maintenance organization as to the enrolled participant's right to receive such services. [2009 c 549 § 7151; 1983 c 202 § 11; 1975 1st ex.s. c 290 § 12.]

48.46.120 Examination of health maintenance organizations—Duties of organizations, powers of commissioner—Independent audit reports. (1) The commissioner may make an examination of the operations of any health maintenance organization as often as he or she deems necessary in order to carry out the purposes of this chapter.

(2) Every health maintenance organization shall submit its books and records relating its operation for financial condition and market conduct examinations and in every way facilitate them. The quality or appropriateness of medical services or systems shall not be examined except to the extent that such items are incidental to an examination of the financial condition or the market conduct of a health maintenance organization. For the purpose of examinations, the commissioner may issue subpoenas, administer oaths, and examine the officers and principals of the health maintenance organization and the principals of such providers concerning their business.

(3) The commissioner may elect to accept and rely on audit reports made by an independent certified public accountant for the health maintenance organization in the course of that part of the commissioner's examination covering the same general subject matter as the audit. The commissioner may incorporate the audit report in his or her report of the examination. [2009 c 549 § 7152; 2007 c 468 § 2; 1987 c 83 § 1; 1986 c 296 § 9; 1985 c 7 § 115; 1983 c 63 § 2; 1975 1st ex.s. c 290 § 13.]

Severability—Effective date—1986 c 296: See notes following RCW 48.14.020.

48.46.200 Rules and regulations. The commissioner may, in accordance with the provisions of the administrative procedure act, chapter 34.05 RCW, promulgate rules and regulations as necessary or proper to carry out the provisions of this chapter. Nothing in this chapter shall be construed to prohibit the commissioner from requiring changes in procedures previously approved by him or her. [2009 c 549 § 7153; 1975 1st ex.s. c 290 § 21.]

48.46.240 Funded reserve requirements. (1) Each health maintenance organization obtaining a certificate of registration from the commissioner shall provide and maintain a funded reserve of one hundred fifty thousand dollars. The funded reserve shall be deposited with the commissioner or with any organization/trustee acceptable to him or her in the form of cash, securities eligible for investment by the health maintenance organization pursuant to chapter 48.13 RCW, approved surety bond or any combination of these, and must equal or exceed one hundred fifty thousand dollars. The funded reserve shall be established as an assurance that the uncovered expenditure obligations of the health maintenance organization to the enrolled participants will be performed.

(2) All income from reserves on deposit with the commissioner shall belong to the depositing health maintenance organization and shall be paid to it as it becomes available.

(3) Any funded reserve required by this section shall be considered an asset of the health maintenance organization in determining the organization's net worth.

(4) A health maintenance organization that has made a securities deposit with the commissioner may, at its option, withdraw the securities deposit or any part of the deposit after first having deposited or provided in lieu thereof an approved surety bond, a deposit of cash or securities, or any combination of these or other deposits of equal amount and value to that withdrawn. Any securities and surety bond shall be subject to approval by the commissioner before being substituted. [2009 c 549 § 7154; 1990 c 119 § 6; 1985 c 320 § 4; 1982 c 151 § 3.]

Effective date—1982 c 151: See note following RCW 48.46.020.

48.46.930 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. ***(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state

registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 127.]

Chapter 48.56 RCW
INSURANCE PREMIUM FINANCE COMPANY ACT

Sections

48.56.040 Investigation of applicant—Qualifications—Hearing.
48.56.050 Revocation, suspension, or refusal to renew.
48.56.060 Records.
48.56.110 Cancellation of insurance contract.

48.56.040 Investigation of applicant—Qualifications—Hearing. (1) Upon the filing of an application and the payment of the license fee the commissioner shall make an investigation of each applicant and shall issue a license if the applicant is qualified in accordance with this chapter. If the commissioner does not so find, he or she shall, within thirty days after he or she has received such application, at the request of the applicant, give the applicant a full hearing.

(2) The commissioner shall issue or renew a license as may be applied for when he or she is satisfied that the person to be licensed—

(a) is competent and trustworthy and intends to act in good faith in the capacity involved by the license applied for,

(b) has a good business reputation and has had experience, training, or education so as to be qualified in the business for which the license is applied for, and

(c) if a corporation, is a corporation incorporated under the laws of the state or a foreign corporation authorized to transact business in the state. [2009 c 549 § 7155; 1969 ex.s. c 190 § 4.]

48.56.050 Revocation, suspension, or refusal to renew. (1) The commissioner may revoke or suspend the license of any premium finance company when and if after investigation it appears to the commissioner that—

(a) any license issued to such company was obtained by fraud,

(b) there was any misrepresentation in the application for the license,

(c) the holder of such license has otherwise shown himself or herself untrustworthy or incompetent to act as a premium finance company, or

(d) such company has violated any of the provisions of this chapter.

(2) Before the commissioner shall revoke, suspend, or refuse to renew the license of any premium finance company, he or she shall give to such person an opportunity to be fully heard and to introduce evidence in his or her behalf. In lieu of revoking or suspending the license for any of the causes enumerated in this section, after hearing as herein provided, the commissioner may subject such company to a penalty of not more than two hundred dollars for each offense when in his or her judgment he or she finds that the public interest would not be harmed by the continued operation of such company. The amount of any such penalty shall be paid by such company through the office of the commissioner to the state treasurer. At any hearing provided by this section, the commissioner shall have authority to administer oaths to witnesses. Anyone testifying falsely, after having been administered such oath, shall be subject to the penalty of perjury.

(3) If the commissioner refuses to issue or renew any license or if any applicant or licensee is aggrieved by any action of the commissioner, said applicant or licensee shall have the right to a hearing and court proceeding as provided by statute. [2009 c 549 § 7156; 1969 ex.s. c 190 § 5.]

48.56.060 Records. (1) Every licensee shall maintain records of its premium finance transactions and the said records shall be open to examination and investigation by the commissioner. The commissioner may at any time require any licensee to bring such records as he or she may direct to the commissioner's office for examination.

(2) Every licensee shall preserve its records of such premium finance transactions, including cards used in a card system, for at least three years after making the final entry in respect to any premium finance agreement. The preservation of records in photographic form shall constitute compliance with this requirement. [2009 c 549 § 7157; 1969 ex.s. c 190 § 6.]

48.56.110 Cancellation of insurance contract. (1) When a premium finance agreement contains a power of attorney enabling the premium finance company to cancel any insurance contract or contracts listed in the agreement, the insurance contract or contracts shall not be canceled by the premium finance company unless such cancellation is effectuated in accordance with this section.

(2) Not less than ten days' written notice shall be mailed to the insured of the intent of the premium finance company to cancel the insurance contract unless the default is cured within such ten day period.

(3) After expiration of such ten day period, the premium finance company may thereafter request in the name of the insured, cancellation of such insurance contract or contracts by mailing to the insurer a notice of cancellation, and the insurance contract shall be canceled as if such notice of cancellation had been submitted by the insured himself or herself, but without requiring the return of the insurance contract or contracts. The premium finance company shall also mail a notice of cancellation to the insured at his last known address.

(4) All statutory, regulatory, and contractual restrictions providing that the insurance contract may not be canceled unless notice is given to a governmental agency, mortgagee, or other third party shall apply where cancellation is effected under the provisions of this section. The insurer shall give the prescribed notice in behalf of itself or the insured to any governmental agency, mortgagee, or other third party on or before the second business day after the day it receives the notice of cancellation from the premium finance company and shall determine the effective date of cancellation taking into consideration the number of days notice required to complete the cancellation. [2009 c 549 § 7158; 1969 ex.s. c 190 § 11.]

Chapter 48.62 RCW
LOCAL GOVERNMENT INSURANCE TRANSACTIONS

Sections

48.62.121 General operating regulations—Employee remuneration—Governing control—School districts—Use of insurance producers and surplus line brokers—Health care services—Trusts.
48.62.151 Insurance premium taxes—Exemption.

48.62.121 General operating regulations—Employee remuneration—Governing control—School districts—Use of insurance producers and surplus line brokers—Health care services—Trusts. (1) No employee or official of a local government entity may directly or indirectly receive anything of value for services rendered in connection with the operation and management of a self-insurance program other than the salary and benefits provided by his or her employer or the reimbursement of expenses reasonably incurred in furtherance of the operation or management of the program. No employee or official of a local government entity may accept or solicit anything of value for personal benefit or for the benefit of others under circumstances in which it can be reasonably inferred that the employee's or official's independence of judgment is impaired with respect to the management and operation of the program.

(2)(a) No local government entity may participate in a joint self-insurance program in which local government entities do not retain complete governing control. This prohibition does not apply to:

(i) Local government contribution to a self-insured employee health and welfare benefits plan otherwise authorized and governed by state statute;

(ii) Local government participation in a multistate joint program where control is shared with local government entities from other states; or

(iii) Local government contribution to a self-insured employee health and welfare benefit trust in which the local government shares governing control with their employees.

(b) If a local government self-insured health and welfare benefit program, established by the local government as a trust, shares governing control of the trust with its employees:

(i) The local government must maintain at least a fifty percent voting control of the trust;

(ii) No more than one voting, nonemployee, union representative selected by employees may serve as a trustee; and

(iii) The trust agreement must contain provisions for resolution of any deadlock in the administration of the trust.

(3) Moneys made available and moneys expended by school districts and educational service districts for self-insurance under this chapter are subject to such rules of the superintendent of public instruction as the superintendent may adopt governing budgeting and accounting. However, the superintendent shall ensure that the rules are consistent with those adopted by the state risk manager for the management and operation of self-insurance programs.

(4) RCW 48.30.140, 48.30.150, 48.30.155, and 48.30.157 apply to the use of insurance producers and surplus line brokers by local government self-insurance programs.

(5) Every individual and joint local government self-insured health and welfare benefits program that provides comprehensive coverage for health care services shall include mandated benefits that the state health care authority is required to provide under RCW 41.05.170 and 41.05.180. The state risk manager may adopt rules identifying the mandated benefits.

(6) An employee health and welfare benefit program established as a trust shall contain a provision that trust funds be expended only for purposes of the trust consistent with statutes and rules governing the local government or governments creating the trust. [2009 c 162 § 29; 2008 c 217 § 62; 1993 c 458 § 1; 1991 sp.s. c 30 § 12.]

Effective date—2009 c 162: See note following RCW 48.03.020.

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

Review of health care trusts—1993 c 458: "If chapter 492, Laws of 1993 is enacted into law, the provisions of chapter 48.62 RCW shall be reviewed to evaluate the extent to which health care trusts provide benefits to certain individuals in the state; and to review the federal laws that may constrain the organization or operation of these joint employee-employer entities. The health services commission shall make appropriate recommendations to the governor and the legislature as to how these trusts can be brought under the provisions of chapter 492, Laws of 1993." [1993 c 458 § 3.]

48.62.151 Insurance premium taxes—Exemption. A joint self-insurance program approved in accordance with this chapter is exempt from insurance premium taxes, from fees assessed under chapter 48.02 RCW, from chapters 48.32 and 48.32A RCW, from business and occupations taxes imposed under chapter 82.04 RCW, and from any assigned risk plan or joint underwriting association otherwise required by law. This section does not apply to and no exemption is provided for insurance companies issuing policies to cover program risks, nor does it apply to or provide an exemption for third-party administrators, surplus line brokers, or insurance producers serving the self-insurance program. [2009 c 162 § 30; 2008 c 217 § 63; 1991 sp.s. c 30 § 15.]

Effective date—2009 c 162: See note following RCW 48.03.020.

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

Chapter 48.64 RCW
AFFORDABLE HOUSING ENTITIES—JOINT SELF-INSURANCE PROGRAMS

Sections

48.64.005 Intent—Liberal construction. *(Effective January 1, 2010.)*
48.64.010 Definitions. *(Effective January 1, 2010.)*
48.64.020 Rules necessary to implement multistate program—State risk manager. *(Effective January 1, 2010.)*
48.64.030 Authority to join or form program—Requirements—Terms of agreement. *(Effective January 1, 2010.)*
48.64.040 When chapter not applicable. *(Effective January 1, 2010.)*
48.64.050 Management and operation of programs—Rules adopted by state risk manager. *(Effective January 1, 2010.)*
48.64.060 Program approval required from state risk manager—Plan submission. *(Effective January 1, 2010.)*
48.64.070 Multistate programs—Conditions and requirements for participation. *(Effective January 1, 2010.)*
48.64.080 Program approval or disapproval—Plan review—State risk manager's duties—Violations—Fines—Annual program reports. *(Effective January 1, 2010.)*
48.64.090 Program may designate treasurer—Bond. *(Effective January 1, 2010.)*
48.64.100 Employees or officials of a participating affordable housing entity—Restrictions on receiving anything of value. *(Effective January 1, 2010.)*
48.64.110 Programs are exempt from certain taxes and fees. *(Effective January 1, 2010.)*

48.64.120 Investigation fee—Amount determined by state risk manager. *(Effective January 1, 2010.)*
48.64.130 Immunity from liability in civil actions—Filing, furnishing, or using information. *(Effective January 1, 2010.)*
48.64.900 Effective date—2009 c 314.

48.64.005 Intent—Liberal construction. ***(Effective January 1, 2010.)*** This chapter is intended to provide authority for two or more affordable housing entities to participate in a joint self-insurance program covering property or liability risks. This chapter provides affordable housing entities with the exclusive source of authority to jointly self-insure property and liability risks, jointly purchase insurance or reinsurance, and to contract for risk management, claims, and administrative services with other affordable housing entities. This chapter must be liberally construed to grant affordable housing entities maximum flexibility in jointly self-insuring to the extent the self-insurance programs are operated in a safe and sound manner. This chapter is intended to require prior approval for the establishment of every joint self-insurance program. In addition, this chapter is intended to require every joint self-insurance program for affordable housing entities established under this chapter to notify the state of the existence of the program and to comply with the regulatory and statutory standards governing the management and operation of the programs as provided in this chapter. This chapter is not intended to authorize or regulate self-insurance of unemployment compensation under chapter 50.44 RCW or industrial insurance under chapter 51.14 RCW. [2009 c 314 § 1.]

48.64.010 Definitions. ***(Effective January 1, 2010.)*** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Affordable housing" means housing projects in which some of the dwelling units may be purchased or rented on a basis that is affordable to households with an income of eighty percent or less of the county median family income, adjusted for family size.

(2) "Affordable housing entity" means any of the following:

(a) A housing authority created under the laws of this state or another state and any agency or instrumentality of a housing authority including, but not limited to, a legal entity created to conduct a joint self-insurance program for housing authorities that is operating in accordance with chapter 48.62 RCW;

(b) A nonprofit corporation, whether organized under the laws of this state or another state, that is engaged in providing affordable housing and is necessary for the completion, management, or operation of a project because of its access to funding sources that are not available to a housing authority, as described in this section; or

(c) A general or limited partnership or limited liability company, whether organized under the laws of this state or another state, that is engaged in providing affordable housing as defined in this section. A partnership or limited liability company may only be considered an affordable housing entity if a housing authority or nonprofit corporation, as described in this subsection, satisfies any of the following conditions: (i) It has, or has the right to acquire, a financial or ownership interest in the partnership or limited liability company; (ii) it possesses the power to direct management or policies of the partnership or limited liability company; or (iii) it has entered into a contract to lease, manage, or operate the affordable housing owned by the partnership or limited liability company.

(3) "Property and liability risks" includes the risk of property damage or loss sustained by an affordable housing entity and the risk of claims arising from the tortious or negligent conduct or any error or omission of the entity, its officers, employees, agents, or volunteers as a result of which a claim may be made against the entity.

(4) "Self-insurance" means a formal program of advance funding and management of entity financial exposure to a risk of loss that is not transferred through the purchase of an insurance policy or contract.

(5) "State risk manager" means the risk manager of the risk management division within the office of financial management. [2009 c 314 § 2.]

48.64.020 Rules necessary to implement multistate program—State risk manager. ***(Effective January 1, 2010.)*** Prior to the approval of a multistate joint self-insurance program for affordable housing entities, the state risk manager shall adopt rules further clarifying the definitions of "affordable housing" and "affordable housing entity" as defined in RCW 48.64.010, and the conditions and limitations under which affordable housing entities may participate or be expelled from the joint self-insurance program. [2009 c 314 § 3.]

48.64.030 Authority to join or form program—Requirements—Terms of agreement. ***(Effective January 1, 2010.)*** (1) The governing body of an affordable housing entity may join or form a self-insurance program together with one or more other affordable housing entities, and may jointly purchase insurance or reinsurance with one or more other affordable housing entities for property and liability risks only as permitted under this chapter. Affordable housing entities may contract for or hire personnel to provide risk management, claims, and administrative services in accordance with this chapter.

(2) The agreement to form a joint self-insurance program may include the organization of a separate legal or administrative entity with powers delegated to the entity. The entity may be a nonprofit corporation, limited liability company, partnership, trust, or other form of entity, whether organized under the laws of this state or another state.

(3) If provided for in the organizational documents, a joint self-insurance program may, in conformance with this chapter:

(a) Contract or otherwise provide for risk management and loss control services;

(b) Contract or otherwise provide legal counsel for the defense of claims and other legal services;

(c) Consult with the state insurance commissioner and the state risk manager;

(d) Jointly purchase insurance and reinsurance coverage in a form and amount as provided for in the organizational documents;

(e) Obligate the program's participants to pledge revenues or contribute money to secure the obligations or pay the expenses of the program, including the establishment of a reserve or fund for coverage; and

(f) Possess any other powers and perform all other functions reasonably necessary to carry out the purposes of this chapter.

(4) Every joint self-insurance program governed by this chapter must appoint the state risk manager as its attorney to receive service of, and upon whom must be served, all legal process issued against the program in this state upon causes of action arising in this state.

(a) Service upon the state risk manager as attorney constitutes service upon the program. Service upon joint self-insurance programs subject to this chapter may only occur by service upon the state risk manager. At the time of service, the plaintiff shall pay to the state risk manager a fee to be set by the state risk manager, taxable as costs in the action.

(b) With the initial filing for approval with the state risk manager, each joint self-insurance program must designate by name and address the person to whom the state risk manager must forward legal process that is served upon him or her. The joint self-insurance program may change this person by filing a new designation.

(c) The appointment of the state risk manager as attorney is irrevocable, binds any successor in interest or to the assets or liabilities of the joint self-insurance program, and remains in effect as long as there is in force in this state any contract made by the joint self-insurance program or liabilities or duties arising from the contract.

(d) The state risk manager shall keep a record of the day and hour of service upon him or her of all legal process. A copy of the process, by registered mail with return receipt requested, must be sent by the state risk manager to the person designated to receive legal process by the joint self-insurance program in its most recent designation filed with the state risk manager. Proceedings must not commence against the joint self-insurance program, and the program must not be required to appear, plead, or answer, until the expiration of forty days after the date of service upon the state risk manager. [2009 c 314 § 4.]

48.64.040 When chapter not applicable. ***(Effective January 1, 2010.)*** This chapter does not apply to an affordable housing entity that:

(1) Individually self-insures for property and liability risks; or

(2) Participates in a risk pooling arrangement, including a risk retention group or a risk purchasing group, regulated under chapter 48.92 RCW, or is a captive insurer authorized in its state of domicile. [2009 c 314 § 5.]

48.64.050 Management and operation of programs—Rules adopted by state risk manager. ***(Effective January 1, 2010.)*** The state risk manager shall adopt rules governing the management and operation of joint self-insurance programs for affordable housing entities that cover property or liability risks. All rules must be appropriate for the type of program and class of risk covered. The state risk manager's rules must include:

(1) Standards for the management, operation, and solvency of joint self-insurance programs, including the necessity and frequency of actuarial analyses and claims audits;

(2) Standards for claims management procedures;

(3) Standards for contracts between joint self-insurance programs and private businesses, including standards for contracts between third-party administrators and programs; and

(4) Standards that preclude housing authorities or other public entities participating in the joint self-insurance program from subsidizing, regardless of the form of subsidy, affordable housing entities that are not housing authorities or public entities. These standards do not apply to the consideration attributable to the ownership interest of a housing authority or public entity in a separate legal or administrative entity organized with respect to the program. [2009 c 314 § 6.]

48.64.060 Program approval required from state risk manager—Plan submission. ***(Effective January 1, 2010.)*** Before the establishment of a joint self-insurance program covering property or liability risks by affordable housing entities, the entities must obtain the approval of the state risk manager. The entities proposing the creation of a joint self-insurance program requiring prior approval shall submit a plan of management and operation to the state risk manager that provides at least the following information:

(1) The risk or risks to be covered, including any coverage definitions, terms, conditions, and limitations;

(2) The amount and method of funding the covered risks, including the initial capital and proposed rates and projected premiums;

(3) The proposed claim reserving practices;

(4) The proposed purchase and maintenance of insurance or reinsurance in excess of the amounts retained by the joint self-insurance program;

(5) The legal form of the program including, but not limited to, any articles of incorporation, bylaws, charter, or trust agreement or other agreement among the participating entities;

(6) The agreements with participants in the program defining the responsibilities and benefits of each participant and management;

(7) The proposed accounting, depositing, and investment practices of the program;

(8) The proposed time when actuarial analysis will be first conducted and the frequency of future actuarial analysis;

(9) A designation of the individual to whom service of process must be forwarded by the state risk manager on behalf of the program;

(10) All contracts between the program and private persons providing risk management, claims, or other administrative services;

(11) A professional analysis of the feasibility of the creation and maintenance of the program;

(12) A legal determination of the potential federal and state tax liabilities of the program; and

(13) Any other information required by rule of the state risk manager that is necessary to determine the probable financial and management success of the program or that is

necessary to determine compliance with this chapter. [2009 c 314 § 7.]

48.64.070 Multistate programs—Conditions and requirements for participation. ***(Effective January 1, 2010.)*** An affordable housing entity may participate in a joint self-insurance program covering property or liability risks with similar affordable housing entities from other states if the program satisfies the following requirements:

(1) An ownership interest in the program is limited to some or all of the affordable housing entities of this state and affordable housing entities of other states that are provided insurance by the program;

(2) The participating affordable housing entities of this state and other states shall elect a board of directors to manage the program, a majority of whom must be affiliated with one or more of the participating affordable housing entities;

(3) The program must provide coverage through the delivery to each participating affordable housing entity of one or more written policies affecting insurance of covered risks;

(4) The program must be financed, including the payment of premiums and the contribution of initial capital, in accordance with the plan of management and operation submitted to the state risk manager in accordance with this chapter;

(5) The financial statements of the program must be audited annually by the certified public accountants for the program, and these audited financial statements must be delivered to the state risk manager not more than one hundred twenty days after the end of each fiscal year of the program;

(6) The investments of the program must be initiated only with financial institutions or broker-dealers, or both, doing business in those states in which participating affordable housing entities are located, and these investments must be audited annually by the certified public accountants for the program;

(7) The treasurer of a multistate joint self-insurance program must be designated by resolution of the program and the treasurer must be located in the state of one of the participating entities;

(8) The participating affordable housing entities may have no contingent liabilities for covered claims, other than liabilities for unpaid premiums, if assets of the program are insufficient to cover the program's liabilities; and

(9) The program must obtain approval from the state risk manager in accordance with this chapter and must remain in compliance with this chapter, except if provided otherwise under this section. [2009 c 314 § 8.]

48.64.080 Program approval or disapproval—Plan review—State risk manager's duties—Violations—Fines—Annual program reports. ***(Effective January 1, 2010.)*** (1) Within one hundred twenty days of receipt of a plan of management and operation, the state risk manager shall either approve or disapprove of the formation of the joint self-insurance program after reviewing the plan to determine whether the proposed program complies with this chapter and all rules adopted in accordance with this chapter.

(2) If the state risk manager denies a request for approval, the state risk manager shall specify in detail the reasons for denial and the manner in which the program fails to meet the requirements of this chapter or any rules adopted in accordance with this chapter.

(3) If the state risk manager determines that a joint self-insurance program covering property or liability risks is in violation of this chapter or is operating in an unsafe financial condition, the state risk manager may issue and serve upon the program an order to cease and desist from the violation or practice.

(a) The state risk manager shall deliver the order to the appropriate entity or entities directly or mail it to the appropriate entity or entities by certified mail with return receipt requested.

(b) If the program violates the order or has not taken steps to comply with the order after the expiration of twenty days after the cease and desist order has been received by the program, the program is deemed to be operating in violation of this chapter, and the state risk manager shall notify the attorney general of the violation.

(c) After hearing or with the consent of a program governed under this chapter and in addition to or in lieu of a continuation of the cease and desist order, the state risk manager may levy a fine upon the program in an amount not less than three hundred dollars and not more than ten thousand dollars. The order levying the fine must specify the period within which the fine must be fully paid. The period within which the fines must be paid must not be less than fifteen and no more than thirty days from the date of the order. Upon failure to pay the fine when due, the state risk manager shall request the attorney general to bring a civil action on the state risk manager's behalf to collect the fine. The state risk manager shall pay any fine collected to the state treasurer for the account of the general fund.

(4) Each joint self-insurance program approved by the state risk manager shall annually file a report with the state risk manager providing:

(a) Details of any changes in the articles of incorporation, bylaws, charter, or trust agreement or other agreement among the participating affordable housing entities;

(b) Copies of all the insurance coverage documents;

(c) A description of the program structure, including participants' retention, program retention, and excess insurance limits and attachment point;

(d) An actuarial analysis;

(e) A list of contractors and service providers;

(f) The financial and loss experience of the program; and

(g) Other information as required by rule of the state risk manager.

(5) A joint self-insurance program requiring the state risk manager's approval may not engage in an act or practice that in any respect significantly differs from the management and operation plan that formed the basis for the state risk manager's approval of the program unless the program first notifies the state risk manager in writing and obtains the state risk manager's approval. The state risk manager shall approve or disapprove the proposed change within sixty days of receipt of the notice. If the state risk manager denies a requested change, the state risk manager shall specify in detail the reasons for the denial and the manner in which the program

would fail to meet the requirements of this chapter or any rules adopted in accordance with this chapter. [2009 c 314 § 9.]

48.64.090 Program may designate treasurer—Bond. ***(Effective January 1, 2010.)*** (1) A joint self-insurance program may by resolution of the program designate a person having experience with investments or financial matters as treasurer of the program. The program must require a bond obtained from a surety company in an amount and under the terms and conditions that the program finds will protect against loss arising from mismanagement or malfeasance in investing and managing program funds. The program may pay the premium on the bond.

(2) All interest and earnings collected on joint self-insurance program funds belong to the program and must be deposited to the program's credit in the proper program account. [2009 c 314 § 10.]

48.64.100 Employees or officials of a participating affordable housing entity—Restrictions on receiving anything of value. ***(Effective January 1, 2010.)*** (1) An employee or official of a participating affordable housing entity in a joint self-insurance program may not directly or indirectly receive anything of value for services rendered in connection with the operation and management of a self-insurance program other than the salary and benefits provided by his or her employer or the reimbursement of expenses reasonably incurred in furtherance of the operation or management of the program. An employee or official of a participating affordable housing entity in a joint self-insurance program may not accept or solicit anything of value for personal benefit or for the benefit of others under circumstances in which it can be reasonably inferred that the employee's or official's independence of judgment is impaired with respect to the management and operation of the program.

(2) RCW 48.30.140, 48.30.150, and 48.30.157 apply to the use of insurance producers by a joint self-insurance program. [2009 c 314 § 11.]

48.64.110 Programs are exempt from certain taxes and fees. ***(Effective January 1, 2010.)*** A joint self-insurance program approved in accordance with this chapter is exempt from insurance premium taxes, fees assessed under chapter 48.02 RCW, chapters 48.32 and 48.32A RCW, business and occupation taxes imposed under chapter 82.04 RCW, and any assigned risk plan or joint underwriting association otherwise required by law. This section does not apply to, and no exemption is provided for, insurance companies issuing policies to cover program risks, and does not apply to or provide an exemption for third-party administrators or insurance producers serving the joint self-insurance program. [2009 c 314 § 12.]

48.64.120 Investigation fee—Amount determined by state risk manager. ***(Effective January 1, 2010.)*** (1) The state risk manager shall establish and charge an investigation fee in an amount necessary to cover the costs for the initial review and approval of a joint self-insurance program. The fee must accompany the initial submission of the plan of operation and management.

(2) The costs of subsequent reviews and investigations must be charged to the joint self-insurance program being reviewed or investigated in accordance with the actual time and expenses incurred in the review or investigation.

(3) Any program failing to remit its assessment when due is subject to denial of permission to operate or to a cease and desist order until the assessment is paid. [2009 c 314 § 13.]

48.64.130 Immunity from liability in civil actions—Filing, furnishing, or using information. ***(Effective January 1, 2010.)*** (1) Any person who files reports or furnishes other information required under this title, required by the state risk manager under the authority granted under this title, or which is useful to the state risk manager in the administration of this title, is immune from liability in any civil action or suit arising from the filing of any such report or furnishing such information to the state risk manager, unless actual malice, fraud, or bad faith is shown.

(2) The state risk manager and his agents and employees are immune from liability in any civil action or suit arising from the publication of any report or bulletins or arising from dissemination of information related to the official activities of the state risk manager unless actual malice, fraud, or bad faith is shown.

(3) The immunity granted under this section is in addition to any common law or statutory privilege or immunity enjoyed by such person. This section is not intended to abrogate or modify in any way such common law or statutory privilege or immunity. [2009 c 314 § 14.]

48.64.900 Effective date—2009 c 314. This act takes effect January 1, 2010. [2009 c 314 § 17.]

Chapter 48.66 RCW

MEDICARE SUPPLEMENTAL HEALTH INSURANCE ACT

Sections

48.66.045 Mandated coverage for replacement policies—Rates on a community-rated basis.
48.66.057 Rejection of medicare eligible person—When notice and information must be provided to applicant.
48.66.920 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. *(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*

48.66.045 Mandated coverage for replacement policies—Rates on a community-rated basis. (1) Every issuer of a medicare supplement insurance policy or certificate providing coverage to a resident of this state issued on or after January 1, 1996, and before June 1, 2010, shall:

(a) Unless otherwise provided for in RCW 48.66.055, issue coverage under its standardized benefit plans B, C, D, E, F, G, K, and L without evidence of insurability to any resident of this state who is eligible for both medicare hospital and physician services by reason of age or by reason of disability or end-stage renal disease, if the medicare supplement policy replaces another medicare supplement standardized

benefit plan policy or certificate B, C, D, E, F, G, K, or L, or other more comprehensive coverage than the replacing policy; and

(b) Unless otherwise provided for in RCW 48.66.055, issue coverage under its standardized plans A, H, I, and J without evidence of insurability to any resident of this state who is eligible for both medicare hospital and physician services by reason of age or by reason of disability or end-stage renal disease, if the medicare supplement policy replaces another medicare supplement policy or certificate which is the same standardized plan as the replaced policy. After December 31, 2005, plans H, I, and J may be replaced only by the same plan if that plan has been modified to remove outpatient prescription drug coverage.

(2)(a) Unless otherwise provided for in RCW 48.66.055, every issuer of a medicare supplement insurance policy or certificate providing coverage to a resident of this state issued on or after June 1, 2010, shall issue coverage under its standardized plans B, C, D, E, F with high deductible, G, K, L, M, or N without evidence of insurability to any resident of this state who is eligible for both medicare hospital and physician services by reason of age or by reason of disability or end-stage renal disease, if the medicare supplement policy or certificate replaces another medicare supplement policy or certificate or other more comprehensive coverage; and

(b) Unless otherwise provided for in RCW 48.66.055, issue coverage under its standardized plan A without evidence of insurability to any resident of this state who is eligible for both medicare hospital and physician services by reason of age or by reason of disability or end-stage renal disease, if the medicare supplement policy or certificate replaces another standardized plan A medicare supplement policy or certificate.

(3) Every issuer of a medicare supplement insurance policy or certificate providing coverage to a resident of this state issued on or after January 1, 1996, shall set rates only on a community-rated basis. Premiums shall be equal for all policyholders and certificate holders under a standardized medicare supplement benefit plan form, except that an issuer may vary premiums based on spousal discounts, frequency of payment, and method of payment including automatic deposit of premiums and may develop no more than two rating pools that distinguish between an insured's eligibility for medicare by reason of:

(a) Age; or

(b) Disability or end-stage renal disease. [2009 c 161 § 5; 2005 c 41 § 4; 2004 c 83 § 1; 1999 c 334 § 1; 1995 c 85 § 3.]

Intent—2005 c 41: See note following RCW 48.66.025.

Severability—2004 c 83: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2004 c 83 § 2.]

Effective date—2004 c 83: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 22, 2004]." [2004 c 83 § 3.]

Effective date—1999 c 334: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 14, 1999]." [1999 c 334 § 2.]

48.66.057 Rejection of medicare eligible person—When notice and information must be provided to applicant. Any medicare eligible person who is rejected for medical reasons, is required to accept restrictive riders, an uprated premium, or preexisting conditions limitations, the effect of which is to substantially reduce coverage from that received by a person considered a standard risk by at least one member as defined in RCW 48.41.030(14) shall be provided written notice from the issuer of medicare supplement coverage to whom application was made of the decision not to accept the person's application for enrollment, or to require such restrictions. The notice shall further state that the person is eligible for medicare part C coverage offered in the person's geographic area or coverage provided by the Washington state health insurance pool for Washington residents, and shall include information about medicare part C plans offered in the person's geographic area, about the Washington state health insurance pool, and about available resources to assist the person in choosing appropriate coverage. [2009 c 555 § 1.]

48.66.920 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. ***(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 128.]

Chapter 48.76 RCW

STANDARD NONFORFEITURE LAW FOR LIFE INSURANCE

Sections

48.76.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. *(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*

48.76.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. ***(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated,

dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 129.]

Chapter 48.99 RCW
UNIFORM INSURERS LIQUIDATION ACT

Sections

48.99.020 Delinquency proceedings—Domestic insurers.
48.99.030 Delinquency proceedings—Foreign insurers.
48.99.050 Claims of residents against foreign insurer.
48.99.060 Priority of certain claims.

48.99.020 Delinquency proceedings—Domestic insurers. (1) Whenever under the laws of this state a receiver is to be appointed in delinquency proceedings for an insurer domiciled in this state, the court shall appoint the commissioner as such receiver. The court shall direct the commissioner forthwith to take possession of the assets of the insurer and to administer the same under the orders of the court.

(2) As domiciliary receiver the commissioner shall be vested by operation of law with the title to all of the property, contracts, and rights of action, and all of the books and records of the insurer wherever located, as of the date of entry of the order directing him or her to rehabilitate or liquidate a domestic insurer, or to liquidate the United States branch of an alien insurer domiciled in this state, and he or she shall have the right to recover the same and reduce the same to possession; except that ancillary receivers in reciprocal states shall have, as to assets located in their respective states, the rights and powers which are hereinafter prescribed for ancillary receivers appointed in this state as to assets located in this state.

(3) The filing or recording of the order directing possession to be taken, or a certified copy thereof, in the office where instruments affecting title to property are required to be filed or recorded shall impart the same notice as would be imparted by a deed, bill of sale, or other evidence of title duly filed or recorded.

(4) The commissioner as domiciliary receiver shall be responsible on his or her official bond for the proper administration of all assets coming into his or her possession or control. The court may at any time require an additional bond from the commissioner or his or her deputies if deemed desirable for the protection of the assets.

(5) Upon taking possession of the assets of an insurer the domiciliary receiver shall, subject to the direction of the court, immediately proceed to conduct the business of the insurer or to take such steps as are authorized by the laws of this state for the purpose of liquidating, rehabilitating, reorganizing, or conserving the affairs of the insurer.

(6) In connection with delinquency proceedings the commissioner may appoint one or more special deputy commissioners to act for him or her, and may employ such counsel, clerks, and assistants as he or she deems necessary. The compensation of the special deputies, counsel, clerks, or assistants and all expenses of taking possession of the insurer and of conducting the proceedings shall be fixed by the receiver, subject to the approval of the court, and shall be paid out of the funds or assets of the insurer. Within the limits of the duties imposed upon them special deputies shall possess all the powers given to, and, in the exercise of those powers, shall be subject to all of the duties imposed upon the receiver with respect to such proceedings. [2009 c 549 § 7159; 1947 c 79 § .31.12; Rem. Supp. 1947 § 45.31.12. Formerly RCW 48.31.120.]

48.99.030 Delinquency proceedings—Foreign insurers. (1) Whenever under the laws of this state an ancillary receiver is to be appointed in delinquency proceedings for an insurer not domiciled in this state, the court shall appoint the commissioner as ancillary receiver. The commissioner shall file a petition requesting the appointment (a) if he or she finds that there are sufficient assets of such insurer located in this state to justify the appointment of an ancillary receiver, or (b) if ten or more persons resident in this state having claims against such insurer file a petition with the commissioner requesting the appointment of such ancillary receiver.

(2) The domiciliary receiver for the purpose of liquidating an insurer domiciled in a reciprocal state, shall be vested by operation of law with the title to all of the property, contracts, and rights of action, and all of the books and records of the insurer located in this state, and he or she shall have the immediate right to recover balances due from local insurance producers and surplus line brokers and to obtain possession of any books and records of the insurer found in this state. He or she shall also be entitled to recover the other assets of the insurer located in this state except that upon the appointment of an ancillary receiver in this state, the ancillary receiver shall during the ancillary receivership proceedings have the sole right to recover such other assets. The ancillary receiver shall, as soon as practicable, liquidate from their respective securities those special deposit claims and secured claims which are proved and allowed in the ancillary proceedings in this state, and shall pay the necessary expenses of the proceedings. All remaining assets shall promptly transfer to the domiciliary receiver. Subject to the foregoing provisions the ancillary receiver and his or her deputies shall have the same powers and be subject to the same duties with respect to the administration of such assets, as a receiver of an insurer domiciled in this state.

(3) The domiciliary receiver of an insurer domiciled in a reciprocal state may sue in this state to recover any assets of such insurer to which he or she may be entitled under the laws of this state. [2009 c 162 § 31; 2008 c 217 § 84; 1947 c 79 § .31.13; Rem. Supp. 1947 § 45.31.13. Formerly RCW 48.31.130.]

Effective date—2009 c 162: See note following RCW 48.03.020.

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

48.99.050 Claims of residents against foreign insurer. (1) In a delinquency proceeding in a reciprocal state against an insurer domiciled in that state, claimants against such insurer, who reside within this state may file claims either with the ancillary receiver, if any, appointed in this state, or with the domiciliary receiver. All such claims must be filed

on or before the last date fixed for the filing of claims in the domiciliary delinquency proceeding.

(2) Controverted claims belonging to claimants residing in this state may either (a) be proved in the domiciliary state as provided by the law of that state, or (b) if ancillary proceedings have been commenced in this state, be proved in those proceedings. In the event that any such claimant elects to prove his or her claim in this state, he or she shall file his or her claim with the ancillary receiver in the manner provided by the law of this state for the proving of claims against insurers domiciled in this state, and he or she shall give notice in writing to the receiver in the domiciliary state, either by registered mail or by personal service at least forty days prior to the date set for hearing. The notice shall contain a concise statement of the amount of the claim, the facts on which the claim is based, and the priorities asserted, if any. If the domiciliary receiver, within thirty days after the giving of such notice, shall give notice in writing to the ancillary receiver and to the claimant, either by registered mail or by personal service, of his or her intention to contest such claim, he or she shall be entitled to appear or to be represented in any proceeding in this state involving the adjudication of the claim. The final allowance of the claim by the courts of this state shall be accepted as conclusive as to its amount, and shall also be accepted as conclusive as to its priority, if any, against special deposits or other security located within this state. [2009 c 549 § 7160; 1947 c 79 § .31.15; Rem. Supp. 1947 § 45.31.15. Formerly RCW 48.31.150.]

48.99.060 Priority of certain claims. (1) In a delinquency proceeding against an insurer domiciled in this state, claims owing to residents of ancillary states shall be preferred claims if like claims are preferred under the laws of this state. All such claims whether owing to residents or nonresidents shall be given equal priority of payment from general assets regardless of where such assets are located.

(2) In a delinquency proceeding against an insurer domiciled in a reciprocal state, claims owing to residents of this state shall be preferred if like claims are preferred by the laws of that state.

(3) The owners of special deposit claims against an insurer for which a receiver is appointed in this or any other state shall be given priority against their several special deposits in accordance with the provisions of the statutes governing the creation and maintenance of such deposits. If there is a deficiency in any such deposit so that the claims secured thereby are not fully discharged therefrom, the claimants may share in the general assets, but such sharing shall be deferred until general creditors, and also claimants against other special deposits who have received smaller percentages from their respective special deposits, have been paid percentages of their claims equal to the percentage paid from the special deposit.

(4) The owner of a secured claim against an insurer for which a receiver has been appointed in this or any other state may surrender his or her security and file his or her claim as a general creditor, or the claim may be discharged by resort to the security, in which case the deficiency, if any, shall be treated as a claim against the general assets of the insurer on the same basis as claims of unsecured creditors. If the amount of the deficiency has been adjudicated in ancillary proceedings as provided in this chapter, or if it has been adjudicated by a court of competent jurisdiction in proceedings in which the domiciliary receiver has had notice and opportunity to be heard, such amount shall be conclusive; otherwise the amount shall be determined in the delinquency proceeding in the domiciliary state. [2009 c 549 § 7161; 1993 c 462 § 79; 1947 c 79 § .31.16; Rem. Supp. 1947 § 45.31.16. Formerly RCW 48.31.160.]

Chapter 48.102 RCW
LIFE SETTLEMENTS ACT
(Formerly: Viatical settlements)

Sections

48.102.001 Short title.
48.102.005 Repealed.
48.102.006 Definitions.
48.102.010 Repealed.
48.102.011 Licensing requirements for providers.
48.102.015 Repealed.
48.102.020 Repealed.
48.102.021 Licensing requirements for brokers.
48.102.025 Repealed.
48.102.030 Repealed.
48.102.031 License suspension, revocation, or refusal to renew—Fines.
48.102.035 Repealed.
48.102.040 Repealed.
48.102.041 Contract requirements.
48.102.045 Repealed.
48.102.046 Reporting requirements and record retention.
48.102.050 Repealed.
48.102.051 Privacy.
48.102.055 Repealed.
48.102.061 Examination.
48.102.070 Advertising.
48.102.080 Disclosures to owners.
48.102.090 Disclosure by insurer.
48.102.100 Notice to insured of alternative transactions—Document approved by commissioner.
48.102.110 General rules.
48.102.120 Conflict of laws.
48.102.130 Prohibited practices.
48.102.140 Fraud prevention and control.
48.102.150 Enforcement.
48.102.160 Penalties.
48.102.170 Authority to adopt rules.
48.102.180 Unfair trade practices.
48.102.190 Existing viatical settlement licences—July 26, 2009.
48.102.193 Existing rights or liabilities—July 26, 2009.
48.102.900 Repealed.
48.102.901 Repealed.

48.102.001 Short title. This chapter may be cited as the "life settlements act." [2009 c 104 § 1.]

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

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

(1) "Advertisement" means any written, electronic, or printed communication or any communication by means of recorded telephone messages or transmitted on radio, television, the internet, or similar communications media, including film strips, motion pictures, and videos, published, disseminated, circulated, or placed directly before the public for the purpose of creating an interest in or inducing a person to purchase or sell, assign, devise, bequest, or transfer the death

benefit or ownership of a policy or an interest in a policy pursuant to a life settlement contract.

(2) "Broker" means a person who, on behalf of an owner and for a fee, commission, or other valuable consideration, offers or attempts to negotiate life settlement contracts between an owner and providers. A broker represents only the owner and owes a fiduciary duty to the owner to act according to the owner's instructions, and in the best interest of the owner, notwithstanding the manner in which the broker is compensated. A broker does not mean an attorney, certified public accountant, or financial planner retained in the type of practice customarily performed in their professional capacity to represent the owner whose compensation is not paid directly or indirectly by the provider or any other person, except the owner.

(3) "Business of life settlements" means an activity involved in, but not limited to, offering to enter into, soliciting, negotiating, procuring, effectuating, monitoring, or tracking life settlement contracts.

(4) "Chronically ill" means:

(a) Being unable to perform at least two activities of daily living, i.e., eating, toileting, transferring, bathing, dressing, or continence;

(b) Requiring substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment; or

(c) Having a level of disability substantially similar to that described in (a) of this subsection made in a written determination, as existing on July 26, 2009, by the United States secretary of health and human services.

(5) "Commissioner" means the insurance commissioner.

(6)(a) "Financing entity" means an underwriter, placement agent, lender, purchaser of securities, purchaser of a policy from a provider, credit enhancer, or any entity that has a direct ownership in a policy that is the subject of a life settlement contract, but:

(i) Whose principal activity related to the transaction is providing funds to effect the life settlement contract or purchase of one or more policies; and

(ii) Who has an agreement in writing with one or more providers to finance the acquisition of life settlement contracts.

(b) "Financing entity" does not mean a nonaccredited investor or purchaser.

(7) "Financing transaction" means a transaction in which a licensed provider obtains financing from a financing entity including, without limitation, any secured or unsecured financing, any securitization transaction, or any securities offering which either is registered or exempt from registration under federal and state securities law.

(8) "Fraudulent life settlement act" includes:

(a) Acts or omissions committed by any person who, knowingly and with intent to defraud, for the purpose of depriving another of property or for pecuniary gain, commits, or permits its employees or its agents to engage in acts including, but not limited to:

(i) Presenting, causing to be presented, or preparing with knowledge and belief that it will be presented to or by a provider, premium finance lender, broker, insurer, insurance producer, or any other person, false material information, or concealing material information, as part of, in support of, or concerning a fact material to one or more of the following:

(A) An application for the issuance of a life settlement contract or policy;

(B) The underwriting of a life settlement contract or policy;

(C) A claim for payment or benefit pursuant to a life settlement contract or policy;

(D) Premiums paid on a policy;

(E) Payments and changes in ownership or beneficiary made in accordance with the terms of a life settlement contract or policy;

(F) The reinstatement or conversion of a policy;

(G) In the solicitation, offer to enter into, or effectuation of a life settlement contract, or policy;

(H) The issuance of written evidence of life settlement contracts or insurance; or

(I) Any application for, or the existence of or any payments related to, a loan secured directly or indirectly by any interest in a policy;

(ii) Entering into any act, practice, or arrangement that involves stranger-originated life insurance;

(iii) Failing to disclose to the insurer where the request for such disclosure has been asked for by the insurer that the prospective insured has undergone a life expectancy evaluation by any person or entity other than the insurer or its authorized representatives in connection with the issuance of the policy;

(iv) Employing any device, scheme, or artifice to defraud in the business of life settlements; or

(v) In the solicitation, application, or issuance of a policy, employing any device, scheme, or artifice in violation of state insurable interest laws.

(b) In the furtherance of a fraud or to prevent the detection of a fraud any person commits or permits its employees or its agents to:

(i) Remove, conceal, alter, destroy, or sequester from the commissioner the assets or records of either a broker or provider, or both or other person engaged in the business of life settlements;

(ii) Misrepresent or conceal the financial condition of either a broker or provider, or both, financing entity, insurer, or other person;

(iii) Transact the business of life settlements in violation of laws requiring a license, certificate of authority, or other legal authority for the transaction of the business of life settlements;

(iv) File with the commissioner or the chief insurance regulatory official of another jurisdiction a document containing false information or otherwise concealing information about a material fact from the commissioner;

(v) Engage in embezzlement, theft, misappropriation, or conversion of moneys, funds, premiums, credits, or other property of a provider, insured, owner, or any other person engaged in the business of life settlements;

(vi) Knowingly and with intent to defraud, enter into, broker, or otherwise deal in a life settlement contract, the subject of which is a policy that was obtained by presenting false information concerning any fact material to the policy or by concealing, for the purpose of misleading another, information concerning any fact material to the policy, where the

owner or the owner's agent intended to defraud the policy's issuer;

(vii) Attempt to commit, assist, aid, or abet in the commission of, or conspiracy to commit, the acts or omissions specified in this subsection; or

(viii) Misrepresent the state of residence of an owner to be a state or jurisdiction that does not have a law substantially similar to this chapter for the purpose of evading or avoiding the provisions of this chapter.

(9) "Insured" means the person covered under the policy being considered for sale in a life settlement contract.

(10) "Life expectancy" means the arithmetic mean of the number of months the insured under the policy to be settled can be expected to live considering medical records and appropriate experiential data.

(11) "Life insurance producer" means any person licensed in this state as a resident or nonresident insurance producer who has received qualification or authority for life insurance coverage or a life line of coverage pursuant to RCW 48.17.170.

(12)(a) "Life settlement contract" means a written agreement entered into between a provider and an owner, establishing the terms under which compensation or any thing of value will be paid, which compensation or thing of value is less than the expected death benefit of the policy, in return for the owner's assignment, transfer, sale, devise, or bequest of the death benefit or any portion of a policy for compensation, provided, however, that the minimum value for a life settlement contract shall be greater than a cash surrender value or accelerated death benefit available at the time of an application for a life settlement contract.

(b) "Life settlement contract" also means the transfer for compensation or value of ownership or beneficial interest in a trust or other entity that owns such policy if the trust or other entity was formed or availed of for the principal purpose of acquiring one or more life insurance contracts, which life insurance contract insures the life of a person residing in this state.

(c) "Life settlement contract" also means a written agreement for a loan or other lending transaction, secured primarily by a policy or a premium finance loan made for a policy on or before the date of issuance of the policy where:

(i) The loan proceeds are not used solely to pay premiums for the policy and any costs or expenses incurred by the lender or the borrower in connection with the financing;

(ii) The owner receives on the date of the premium finance loan a guarantee of the future life settlement value of the policy; or

(iii) The owner agrees on the date of the premium finance loan to sell the policy or any portion of its death benefit on any date following the issuance of the policy.

(d) "Life settlement contract" does not mean:

(i) A policy loan by a life insurance company pursuant to the terms of the policy or accelerated death provisions contained in the policy, whether issued with the original policy or as a rider;

(ii) A premium finance loan or any loan made by a bank or other licensed financial institution, provided that neither the default on the loan nor the transfer of the policy in connection with such a default is pursuant to an agreement or understanding with any other person for the purpose of evading regulation under this chapter;

(iii) A collateral assignment of a policy by an owner;

(iv) A loan made by a lender that does not violate any provision of this title, provided the loan is not described in (a) of this subsection, and is not otherwise within the definition of life settlement contract;

(v) An agreement where all the parties (A) are closely related to the insured by blood or law, or (B) have a lawful substantial economic interest in the continued life, health, and bodily safety of the person insured, or are trusts established primarily for the benefit of those parties;

(vi) Any designation, consent, or agreement by an insured who is an employee of an employer in connection with the purchase by the employer, or trust established by the employer, of life insurance on the life of the employee;

(vii) A bona fide business succession planning arrangement:

(A) Between one or more shareholders in a corporation or between a corporation and one or more of its shareholders or one or more trusts established by its shareholders;

(B) Between one or more partners in a partnership or between a partnership and one or more of its partners or one or more trusts established by its partners; or

(C) Between one or more members in a limited liability company or between a limited liability company and one or more of its members or one or more trusts established by its members;

(viii) An agreement entered into by a service recipient, or a trust established by the service recipient, and a service provider, or a trust established by the service provider, who performs significant services for the service recipient's trade or business; or

(ix) Any other contract, transaction, or arrangement from the definition of life settlement contract that the commissioner determines is not of the type intended to be regulated by this chapter.

(13) "Net death benefit" means the amount of the policy to be settled less any outstanding debts or liens.

(14)(a) "Owner" means the owner of a policy, with or without a terminal illness, who enters or seeks to enter into a life settlement contract. For the purposes of this chapter, an owner shall not be limited to an owner of a policy that insures the life of an individual with a terminal or chronic illness or condition except where specifically addressed.

(b) "Owner" does not mean:

(i) Any provider or other licensee under this chapter;

(ii) A qualified institutional buyer as defined, as of July 26, 2009, in rule 144A of the federal securities act of 1933, as amended;

(iii) A financing entity;

(iv) A special purpose entity; or

(v) A related provider trust.

(15) "Patient identifying information" means an insured's address, telephone number, facsimile number, electronic mail address, photograph or likeness, employer, employment status, social security number, or any other information that is likely to lead to the identification of the insured.

(16) "Person" means any natural person or legal entity, including but not limited to, a partnership, limited liability company, association, trust, or corporation.

(17) "Policy" means an individual or group life insurance policy, group certificate, contract, or arrangement of life insurance owned by a resident of this state, regardless of whether delivered or issued for delivery in this state.

(18) "Premium finance loan" means a loan made primarily for the purposes of making premium payments on a policy, which loan is secured by an interest in the policy.

(19)(a) "Provider" means a person, other than an owner, who enters into or effectuates a life settlement contract with an owner.

(b) "Provider" does not mean:

(i) Any bank, savings bank, savings and loan association, or credit union;

(ii) A licensed lending institution or creditor or secured party pursuant to a premium finance loan agreement which takes an assignment of a policy as collateral for a loan;

(iii) The insurer of a policy or rider to the extent of providing accelerated death benefits or riders under an approved policy form or cash surrender value;

(iv) Any natural person who enters into or effectuates no more than one agreement in a calendar year for the transfer of a policy, for compensation or anything of value less than the expected death benefit payable under the policy;

(v) A purchaser;

(vi) Any authorized or eligible insurer that provides financial guaranty insurance to a provider, purchaser, financing entity, special purpose entity, or related provider trust;

(vii) A financing entity;

(viii) A special purpose entity;

(ix) A related provider trust;

(x) A broker; or

(xi) An accredited investor or qualified institutional buyer as defined, respectively, in regulation D, rule 501 or rule 144A of the federal securities act of 1933, as amended, who purchases a policy from a provider.

(20) "Purchased policy" means a policy that has been acquired by a provider pursuant to a life settlement contract.

(21) "Purchaser" means a person who pays compensation or anything of value as consideration for a beneficial interest in a trust which is vested with, or for the assignment, transfer, or sale of, an ownership or other interest in a policy which has been the subject of a life settlement contract.

(22) "Related provider trust" means a titling trust or other trust established by a licensed provider or a financing entity for the sole purpose of holding the ownership or beneficial interest in purchased policies in connection with a financing transaction. In order to qualify as a related provider trust, the trust must have a written agreement with the licensed provider under which the licensed provider is responsible for ensuring compliance with all statutory and regulatory requirements and under which the trust agrees to make all records and files relating to life settlement transactions available to the commissioner as if those records and files were maintained directly by the licensed provider.

(23) "Settled policy" means a policy that has been acquired by a provider pursuant to a life settlement contract.

(24) "Special purpose entity" means a corporation, partnership, trust, limited liability company, or other legal entity formed solely to provide either directly or indirectly access to institutional capital markets for a financing entity or provider:

(a) In connection with a transaction in which the securities in the special purpose entity are acquired by the owner or by a "qualified institutional buyer" as defined in rule 144 promulgated under the federal securities act of 1933, as amended; or

(b) When the securities pay a fixed rate of return commensurate with established asset-backed institutional capital markets.

(25) "Stranger-originated life insurance" means an act, practice, or arrangement to initiate a policy for the benefit of a third-party investor who, at the time of policy origination, has no insurable interest in the insured under chapter 48.18 RCW. Stranger-originated life insurance practices include, but are not limited to, cases in which life insurance is purchased with resources or guarantees from or through a person or entity who, at the time of policy inception, could not lawfully initiate the policy and where, at the time of inception, there is an arrangement or agreement to directly or indirectly transfer the ownership of the policy or the policy benefits, or both, to a third party. Any trust that is created to give the appearance of insurable interest, and is used to initiate one or more policies for investors, violates chapter 48.18 RCW and the prohibition against wagering on human life. Stranger-originated life insurance arrangements do not include those practices set forth in subsection (12)(d) of this section.

(26) "Terminally ill" means having an illness or sickness that can reasonably be expected to result in death in twenty-four months or less. [2009 c 104 § 2.]

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

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

48.102.011 Licensing requirements for providers. (1) A person, wherever located, shall not act as a provider with an owner who is a resident of this state or if there is more than one owner on a single policy and one of the owners is a resident of this state, without first having obtained a license from the commissioner.

(2) An application for a provider license shall be made to the commissioner by the applicant on a form prescribed by the commissioner, and the application shall be accompanied by a licensing fee in the amount of two hundred fifty dollars, which shall be deposited to the insurance commissioner's regulatory account under RCW 48.02.190.

(3) All provider licenses shall continue in force until suspended, revoked, or not renewed. A license shall be subject to renewal annually on the first day of July upon application of the provider and payment of a renewal fee of two hundred fifty dollars, which shall be deposited to the insurance commissioner's regulatory account under RCW 48.02.190. If not so renewed, the license shall automatically expire on the renewal date.

(a) If the renewal fee is not received by the commissioner prior to the expiration date, the provider shall pay to the commissioner in addition to the renewal fee, a surcharge as follows:

(i) For the first thirty days or part thereof delinquency the surcharge is fifty percent of the renewal fee;

(ii) For the next thirty days or part thereof delinquency the surcharge is one hundred percent of the renewal fee;

(b) If the renewal fee is not received by the commissioner after sixty days but prior to twelve months after the expiration date the payment of the renewal fee shall be for reinstatement of the license and the provider shall pay to the commissioner the renewal fee and a surcharge of two hundred percent.

(4) Subsection (3)(a) and (b) of this section does not exempt any person from any penalty provided by law for transacting a life settlement business without a valid and subsisting license.

(5) The applicant shall provide such information as the commissioner may require on forms prescribed by the commissioner. The commissioner has the authority, at any time, to require such an applicant to fully disclose the identity of its stockholders, partners, officers, and employees, and the commissioner may, in the exercise of the commissioner's sole discretion, refuse to issue such a license in the name of any person if not satisfied that any officer, employee, stockholder, or partner thereof who may materially influence the applicant's conduct meets the standards of this chapter.

(6) A license issued to a partnership, corporation, or other entity authorizes all members, officers, and designated employees to act as a licensee under the license, if those persons are named in the application and any supplements to the application.

(7) Upon the filing of an application for a provider's license and the payment of the license fee, the commissioner shall make an investigation of each applicant and may issue a license if the commissioner finds that the applicant:

(a) Has provided a detailed plan of operation;

(b) Is competent and trustworthy and intends to transact its business in good faith;

(c) Has a good business reputation and has had experience, training, or education so as to be qualified in the business for which the license is applied;

(d)(i) Has demonstrated evidence of financial responsibility in a form and in an amount prescribed by the commissioner by rule.

(ii) The commissioner may ask for evidence of financial responsibility at any time the commissioner deems necessary;

(e) If the applicant is a legal entity, is formed or organized pursuant to the laws of this state, is a foreign legal entity authorized to transact business in this state, or provides a certificate of good standing from the state of its domicile; and

(f) Has provided to the commissioner an antifraud plan that meets the requirements of RCW 48.102.140 and includes:

(i) A description of the procedures for detecting and investigating possible fraudulent acts and procedures for resolving material inconsistencies between medical records and insurance applications;

(ii) A description of the procedures for reporting fraudulent insurance acts to the commissioner;

(iii) A description of the plan for antifraud education and training of its underwriters and other personnel; and

(iv) A written description or chart outlining the arrangement of the antifraud personnel who are responsible for the investigation and reporting of possible fraudulent insurance acts and investigating unresolved material inconsistencies between medical records and insurance applications.

(8)(a) A nonresident provider shall appoint the commissioner as its attorney to receive service of, and upon whom shall be served, all legal process issued against it in this state upon causes of action arising within this state. Service upon the commissioner as attorney shall constitute service upon the provider. Service of legal process against the provider can be had only by service upon the commissioner.

(b) With the appointment the provider shall designate the person to whom the commissioner shall forward legal process so served upon him or her. The provider may change the person by filing a new designation.

(c) The appointment of the commissioner as attorney shall be irrevocable, shall bind any successor in interest or to the assets or liabilities of the provider, and shall remain in effect as long as there is in this state any contract made by the provider or liabilities or duties arising therefrom.

(d) Duplicate copies of legal process against a provider for whom the commissioner is attorney shall be served upon him or her either by a person competent to serve summons, or by registered mail. At the time of service the plaintiff shall pay to the commissioner ten dollars, taxable as costs in the action.

(e) The commissioner shall immediately send one of the copies of the process, by registered mail with return receipt requested, to the person designated for the purpose by the provider in its most recent designation filed with the commissioner.

(f) The commissioner shall keep a record of the day and hour of service upon him or her of all legal process. Proceedings shall not be had against the provider, and the provider shall not be required to appear, plead, or answer until the expiration of forty days after the date of service upon the commissioner.

(9) A provider may not use any person to perform the functions of a broker unless the person is authorized to act as a broker under this chapter.

(10) A provider shall provide to the commissioner new or revised information about officers, stockholders, partners, directors, members, or designated employees within thirty days of the change. [2009 c 104 § 3.]

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

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

48.102.021 Licensing requirements for brokers. (1) Only a life insurance producer who has been duly licensed as a resident insurance producer with a lifeline of authority in this state or his or her home state for at least one year and is licensed as a nonresident producer in this state is permitted to operate as a broker.

(2) Not later than thirty days from the first day of operating as a broker, the life insurance producer shall notify the

commissioner that he or she intends acting as a broker on a form prescribed by the commissioner, pay a fee of one hundred dollars, and if a nonresident producer appoint the commissioner as attorney for service of process under subsection (6) of this section. Notification shall include an acknowledgement by the life insurance producer that he or she will operate as a broker in accordance with this chapter.

(3) A person licensed as an attorney, certified public accountant, or financial planner accredited by a nationally recognized accreditation agency, who is retained to represent the owner, whose compensation is not paid directly or indirectly by the provider or purchaser, may negotiate life settlement contracts on behalf of the owner without having to obtain a license as a broker.

(4) The authority to act as a broker shall continue in force until suspended, revoked, or not renewed. The authority to act as a broker shall automatically expire if not timely renewed. The authority to act as a broker shall be valid for a time period coincident with the expiration date of the broker's insurance producer license. The authority to act as a broker is renewable at that time, upon payment of a renewal fee in the amount of one hundred dollars and if the payment is received by the commissioner prior to the expiration date, the broker's authority to act as a broker continues in effect.

(a) If the renewal fee is not received by the commissioner prior to the expiration date, the broker shall pay to the commissioner in addition to the renewal fee, a surcharge as follows:

(i) For the first thirty days or part thereof of delinquency the surcharge is fifty percent of the renewal fee;

(ii) For the next thirty days or part thereof delinquency the surcharge is one hundred percent of the renewal fee;

(b) If the payment of the renewal fee is not received by the commissioner after sixty days the surcharge is two hundred percent of the renewal fee.

(5) Subsection (4)(a) of this section does not exempt any person from any penalty provided by law for transacting life settlement business without the valid authority to act as a broker.

(6)(a) A nonresident broker shall appoint the commissioner as its attorney to receive service of, and upon whom shall be served, all legal process issued against it in this state upon causes of action arising within this state. Service upon the commissioner as attorney shall constitute service upon the broker. Service of legal process against the broker can be had only by service upon the commissioner.

(b) With the appointment the broker shall designate the person to whom the commissioner shall forward legal process so served upon him or her. The broker may change the person by filing a new designation.

(c) The appointment of the commissioner as attorney shall be irrevocable, shall bind any successor in interest or to the assets or liabilities of the broker, and shall remain in effect as long as there is in this state any contract made by the broker or liabilities or duties arising therefrom.

(d) Duplicate copies of legal process against a broker for whom the commissioner is attorney shall be served upon him or her either by a person competent to serve summons, or by registered mail. At the time of service the plaintiff shall pay to the commissioner ten dollars, taxable as costs in the action.

(e) The commissioner shall immediately send one of the copies of the process, by registered mail with return receipt requested, to the person designated for the purpose by the broker in its most recent designation filed with the commissioner.

(f) The commissioner shall keep a record of the day and hour of service upon him or her of all legal process. Proceedings shall not be had against the broker, and the broker shall not be required to appear, plead, or answer until the expiration of forty days after the date of service upon the commissioner.

(7) A broker may not use any person to perform the functions of a provider unless such a person holds a current, valid license as a provider, and as provided in this chapter. [2009 c 104 § 4.]

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

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

48.102.031 License suspension, revocation, or refusal to renew—Fines. (1) If the commissioner finds that a broker:

(a) Committed a fraudulent life settlement act;

(b) Or any officer, partner, member, or director has been guilty of fraudulent or dishonest practices, is subject to a final administrative action, or is otherwise shown to be untrustworthy or incompetent to act as a licensee;

(c) Or any officer, partner, member, or director has been convicted of a felony, or of any misdemeanor of which criminal fraud is an element; or the licensee has pleaded guilty or nolo contendere with respect to any felony or any misdemeanor of which criminal fraud or moral turpitude is an element, regardless whether a judgment of conviction has been entered by the court; or

(d) Has violated any of the provisions of this chapter or fails to comply with any proper order or regulation of the commissioner;

then such action shall be an additional cause under RCW 48.17.530 to place on probation, suspend, revoke, or refuse to renew the insurance producer's license of the broker.

The procedure to suspend, revoke, or nonrenew the broker's insurance producer license shall be governed by RCW 48.17.540. The suspension, revocation, or nonrenewal of the broker's insurance producer license shall terminate the insurance producer's authority to act as a broker under this chapter.

(2) The commissioner may refuse, suspend, revoke, or refuse to renew a provider's license if the commissioner finds that:

(a) The provider committed a fraudulent life settlement act;

(b) There was any material misrepresentation in the provider's application for its license;

(c) The provider or any officer, partner, member, or director has been guilty of fraudulent or dishonest practices, is subject to a final administrative action, or is otherwise

shown to be untrustworthy or incompetent to act as a licensee;

(d) The provider demonstrates a pattern of unreasonably withholding payments to policy owners;

(e) The provider no longer meets the requirements for initial licensure or authority to act as a provider;

(f) The provider or any officer, partner, member, or director has been convicted of a felony, or of any misdemeanor of which criminal fraud is an element; or the provider has pleaded guilty or nolo contendere with respect to any felony or any misdemeanor of which criminal fraud or moral turpitude is an element, regardless whether a judgment of conviction has been entered by the court;

(g) The provider has entered into any life settlement contract that has not been approved under this chapter;

(h) The provider has failed to honor contractual obligations set out in a life settlement contract;

(i) The provider has assigned, transferred, or pledged a settled policy to a person other than a provider licensed in this state, a purchaser, an accredited investor or qualified institutional buyer as defined, respectively, in regulation D, rule 501 or rule 144A of the federal securities act of 1933, as amended, a financing entity, a special purpose entity, or a related provider trust; or

(j) The provider or any officer, partner, member, or key management personnel has violated any of the provisions of this chapter or fails to comply with any proper order or regulation of the commissioner.

(3) The commissioner shall give the provider notice of his or her intention to suspend, revoke, or not renew its license not less than ten days before the order of suspension, revocation, or nonrenewal is to become effective. The commissioner shall not suspend a provider's license for a period in excess of one year, and the commissioner shall state in the order of suspension the period during which it shall be effective.

(4) After hearing or with the consent of the provider or broker and in addition to or in lieu of the suspension, revocation, or refusal to renew any license, the commissioner may levy a fine upon the provider or broker or its employees in an amount not less than two hundred fifty dollars and not more than ten thousand dollars. The order levying the fine shall specify the period within which the fine shall be fully paid and which period shall not be less than fifteen nor more than thirty days from the date of the order. Upon failure to pay the fine when due the commissioner shall revoke the license of the provider or the insurance producer license of the broker if not already revoked, and the fine shall be recovered in a civil action brought on behalf of the commissioner by the attorney general. Any fine so collected shall be paid by the commissioner to the state treasurer for the account of the general fund. [2009 c 104 § 5.]

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

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

48.102.041 Contract requirements. (1) A person may not use any form of life settlement contract in this state unless it has been filed with and approved, if required, by the commissioner in a manner that conforms with the filing procedures and any time restrictions or deeming provisions, if any, for life insurance forms, policies, and contracts.

(2) An insurer may not, as a condition of responding to a request for verification of coverage or in connection with the transfer of a policy pursuant to a life settlement contract, require that the owner, insured, provider, or broker sign any form, disclosure, consent, waiver, or acknowledgment that has not been expressly approved by the commissioner for use in connection with life settlement contracts in this state.

(3) A person shall not use a life settlement contract form or provide to an owner a disclosure statement form in this state unless first filed with and approved by the commissioner. The commissioner shall disapprove a life settlement contract form or disclosure statement form if, in the commissioner's opinion, the contract or provisions contained therein fail to meet the requirements of RCW 48.102.070, 48.102.080, 48.102.110, and 48.102.150 or are unreasonable, contrary to the interests of the public, or otherwise misleading or unfair to the owner. At the commissioner's discretion, the commissioner may require the submission of advertising material. [2009 c 104 § 6.]

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

48.102.046 Reporting requirements and record retention. (1) Each provider shall file with the commissioner on or before March 1 of each year an annual statement containing such information as the commissioner may prescribe by rule. In addition to any other requirements, for any policy settled within five years of policy issuance, the annual statement shall specify the total number, aggregate face amount, and life settlement proceeds of policies settled during the immediately preceding calendar year, together with a breakdown of the information by policy issue year.

(2) Every provider that fails to file an annual statement as required in this section, or fails to reply within thirty calendar days to a written inquiry by the commissioner in connection therewith, shall, in addition to other penalties provided by this chapter, be subject, upon due notice and opportunity to be heard, to a penalty of up to fifty dollars per day of delay, not to exceed twenty-five thousand dollars in the aggregate, for each such failure.

(3) Records of all consummated transactions and life settlement contracts shall be maintained by the provider for three years after the death of the insured and shall be available to the commissioner for inspection during reasonable business hours. [2009 c 104 § 7.]

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

48.102.051 Privacy. (1) Except as otherwise allowed or required by law, a provider, broker, purchaser, insurance company, insurance producer, information bureau, rating agency or company, or any other person with actual knowl-

edge of an insured's identity, shall not disclose the identity of an insured or information that there is a reasonable basis to believe could be used to identify the insured or the insured's financial or medical information to any other person unless the disclosure:

(a) Is necessary to effect a life settlement contract between the owner and a provider and the owner and insured have provided prior written consent to the disclosure;

(b) Is necessary to effectuate the sale of life settlement contracts, or interests therein, as investments, provided (i) the sale is conducted in accordance with applicable state and federal securities law, and (ii) the owner and the insured have both provided prior written consent to the disclosure;

(c) Is provided in response to an investigation or examination by the commissioner or any other governmental officer or agency or pursuant to the requirements of RCW 48.102.061, 48.102.140, and 48.102.150;

(d) Is a term or condition to the transfer of a policy by one provider to another provider, in which case the receiving provider shall be required to comply with the confidentiality requirements of this subsection;

(e) Is necessary to allow the provider or broker or their authorized representatives to make contacts for the purpose of determining health status.

(i) For the purposes of this section, the "authorized representative" does not include any person who has or may have any financial interest in the settlement contract other than a provider, licensed broker, financing entity, related provider trust, or special purpose entity.

(ii) A provider or broker shall require its authorized representative to agree in writing to adhere to the privacy provisions of this chapter; or

(f) Is required to purchase stop loss coverage.

(2) Nonpublic personal information solicited or obtained in connection with a proposed or actual life settlement contract shall be subject to the provisions applicable to financial institutions under the federal Gramm Leach Bliley act, P.L. 106-102 (1999).

(3) Names and individual identification data for all owners and insureds shall be considered private and confidential information and shall not be disclosed by the commissioner unless required by law. [2009 c 104 § 8.]

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

48.102.061 Examination. (1) Any life settlement provider, broker, or person licensed or regulated by this chapter shall be subject to the provisions of chapters 48.03 and 48.37 RCW, except as otherwise explicitly exempted or modified in this chapter.

(2) For the purpose of ascertaining its condition, or compliance with this title, the commissioner may as often as the commissioner finds advisable examine the accounts, records, documents, and transactions of:

(a) Any life settlement provider, broker, or person licensed or regulated under this chapter;

(b) Any person having a contract under which he or she enjoys in fact the exclusive or dominant right to manage or control a provider or broker; and

(c) Any person holding the shares of capital stock of a provider or broker for the purpose of control of its management either as voting trustee or otherwise.

(3) In lieu of an examination or market conduct oversight activity under this chapter of any foreign or alien licensee licensed in this state, the commissioner may, at the commissioner's discretion, accept an examination report or market conduct oversight action on the provider or broker as prepared by the commissioner for the provider's or broker's state of domicile or port-of-entry state.

(4)(a) Every examination, whatsoever, or any part of the examination of any person licensed or regulated under this chapter shall be at the expense of the person examined. RCW 48.03.060 (1) and (2) are not applicable to persons licensed or regulated under this chapter.

(b) When making an examination under this section, the commissioner may retain attorneys, appraisers, independent actuaries, independent certified public accountants, or other professionals and specialists as examiners, the cost of which shall be borne by the person who is the subject of the examination.

(c) The person examined and liable therefore shall reimburse the state upon presentation of an itemized statement thereof, for the actual travel expenses of the commissioner's examiners, their reasonable living expense allowance, and their per diem compensation, including salary and the employer's cost of employee benefits, at a reasonable rate approved by the commissioner, incurred on account of the examination. Per diem salary and expenses for employees shall be established by the commissioner on the basis of the national association of insurance commissioner's recommended salary and expense schedule for zone examiners, or the salary schedule established by the Washington personnel resources board and the expense schedule established by the office of financial management, whichever is higher.

(d) The commissioner or the commissioner's examiners shall not receive or accept any additional emolument on account of any examination.

(5) Nothing contained in this section limits the commissioner's authority to terminate or suspend any examination or market conduct oversight activities in order to pursue other legal or regulatory action under the insurance laws of this state. Findings of fact and conclusions made pursuant to any order adopting an examination report are prima facie evidence in any legal or regulatory action. [2009 c 104 § 9.]

48.102.070 Advertising. (1) A broker, or provider licensed pursuant to this chapter, may conduct or participate in advertisements within this state. These advertisements shall comply with all advertising and marketing laws or rules adopted by the commissioner that are applicable to life insurers or to brokers, and providers licensed pursuant to this chapter.

(2) Advertisements shall be accurate, truthful, and not misleading in fact or by implication.

(3) A person or trust shall not:

(a) Directly or indirectly, market, advertise, solicit, or otherwise promote the purchase of a policy, not previously issued, for the sole purpose of, or with the primary emphasis on, settling the policy; or

(b) Use the words "free," "no cost," or words of similar import in the marketing, advertising, soliciting or otherwise promoting of the purchase of a policy. [2009 c 104 § 10.]

48.102.080 Disclosures to owners. (1) The provider or broker shall provide in writing, or require the broker to provide, in a separate document that is signed by the owner and provider or broker, the following information to the owner no later than the date of application for a life settlement contract:

(a) The fact that possible alternatives to life settlement contracts exist, including, but not limited to, accelerated benefits offered by the issuer of the life insurance policy;

(b) The fact that some or all of the proceeds of a life settlement contract may be taxable and that assistance should be sought from a professional tax advisor;

(c) The fact that the proceeds from a life settlement contract could be subject to the claims of creditors;

(d) The fact that receipt of proceeds from a life settlement contract may adversely affect the recipients' eligibility for public assistance or other government benefits or entitlements and that advice should be obtained from the appropriate agencies;

(e) The fact that the owner has a right to terminate a life settlement contract within fifteen days of the date it is executed by all parties and the owner has received the disclosures required by this section. Rescission, if exercised by the owner, is effective only if both notice of the rescission is given, and the owner repays all proceeds and any premiums, loans, and loan interest paid on account of the provider within the rescission period. If the insured dies during the rescission period, the contract shall be deemed to have been rescinded subject to repayment by the owner or the owner's estate of all proceeds and any premiums, loans, and loan interest to the provider;

(f) The fact that proceeds will be sent to the owner within three business days after the provider has received the insurer or group administrator's acknowledgement that ownership of the policy or interest in the certificate has been transferred and the beneficiary has been designated in accordance with the terms of the life settlement contract;

(g) The fact that entering into a life settlement contract may cause other rights or benefits, including conversion rights and waiver of premium benefits that may exist under the policy to be forfeited by the owner and that assistance should be sought from a professional financial advisor;

(h) The date by which the funds will be available to the owner and the transmitter of the funds;

(i) The fact that the commissioner may require delivery of a buyer's guide or a similar consumer advisory package in the form prescribed by the commissioner to owners during the solicitation process;

(j) The disclosure document shall contain the following language:

"All medical, financial, or personal information solicited or obtained by a provider or broker about an insured, including the insured's identity or the identity of family members, a spouse or a significant other may be disclosed as necessary to effect the life settlement contract between the owner and provider. If you are asked to provide this information, you will be asked to consent to the disclosure. The information may be provided to someone who buys the policy or provides funds for the purchase. You may be asked to renew your permission to share information every two years.";

(k) A separate signed fraud warning as follows:

"Any person who knowingly presents false information in an application for insurance or life settlement contract is guilty of a crime and may be subject to fines and confinement in prison.";

(l) The fact that the insured may be contacted by either the provider or broker or its authorized representative for the purpose of determining the insured's health status or to verify the insured's address. This contact is limited to once every three months if the insured has a life expectancy of more than one year, and no more than once per month if the insured has a life expectancy of one year or less;

(m) The affiliation, if any, between the provider and the issuer of the insurance policy to be settled;

(n) That a broker represents exclusively the owner, and not the insurer or the provider or any other person, and owes a fiduciary duty to the owner, including a duty to act according to the owner's instructions and in the best interest of the owner;

(o) The document shall include the name, address, and telephone number of the provider;

(p) The name, business address, and telephone number of the independent third-party escrow agent, and the fact that the owner may inspect or receive copies of the relevant escrow or trust agreements or documents; and

(q) The fact that a change of ownership could in the future limit the insured's ability to purchase future insurance on the insured's life because there is a limit to how much coverage insurers will issue on one life.

(2) The written disclosures shall be conspicuously displayed in any life settlement contract furnished to the owner by a provider including any affiliations or contractual arrangements between the provider and the broker.

(3) A broker shall provide the owner and the provider with at least the following disclosures no later than the date the life settlement contract is signed by all parties. The disclosures shall be conspicuously displayed in the life settlement contract or in a separate document signed by the owner and provide the following information:

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

(b) A full, complete, and accurate description of all the offers, counter-offers, acceptances, and rejections relating to the proposed life settlement contract;

(c) A written disclosure of any affiliations or contractual arrangements between the broker and any person making an offer in connection with the proposed life settlement contracts;

(d) The name of each broker who receives compensation and the amount of compensation received by that broker, which compensation includes anything of value paid or given to the broker in connection with the life settlement contract;

(e) A complete reconciliation of the gross offer or bid by the provider to the net amount of proceeds or value to be received by the owner. For the purpose of this section, gross offer or bid means the total amount or value offered by the provider for the purchase of one or more life insurance policies, inclusive of commissions and fees; and

(f) The failure to provide the disclosures or rights described in this section is an unfair trade practice pursuant to RCW 48.102.180. [2009 c 104 § 11.]

48.102.090 Disclosure by insurer. In addition to other questions an insurance carrier may lawfully pose to a life insurance applicant, insurance carriers may inquire in the application for insurance whether the proposed owner intends to pay premiums with the assistance of financing from a lender that will use the policy as collateral to support the financing.

(1) If, as described in RCW 48.102.006, the loan provides funds which can be used for a purpose other than paying for the premiums, costs, and expenses associated with obtaining and maintaining the life insurance policy and loan, the application shall be rejected as a violation of the prohibited practices in RCW 48.102.130.

(2) If the financing does not violate RCW 48.102.130 in this manner, the insurance carrier:

(a) May make disclosures, including but not limited to the applicant and the insured, either on the application or an amendment to the application to be completed no later than the delivery of the policy:

"If you have entered into a loan arrangement where the policy is used as collateral, and the policy does change ownership at some point in the future in satisfaction of the loan, the following may be true:

(i) A change of ownership could lead to a stranger owning an interest in the insured's life;

(ii) A change of ownership could in the future limit your ability to purchase future insurance on the insured's life because there is a limit to how much coverage insurers will issue on one life;

(iii) Should there be a change of ownership and you wish to obtain more insurance coverage on the insured's life in the future, the insured's higher issue age, a change in health status, and/or other factors may reduce the ability to obtain coverage and/or may result in significantly higher premiums;

(iv) You should consult a professional advisor, since a change in ownership in satisfaction of the loan may result in tax consequences to the owner, depending on the structure of the loan"; and

(b) May require certifications, such as the following, from the applicant and/or the insured:

"(i) I have not entered into any agreement or arrangement providing for the future sale of this life insurance policy;

(ii) My loan arrangement for this policy provides funds sufficient to pay for some or all of the premiums, costs, and expenses associated with obtaining and maintaining my life insurance policy, but I have not entered into any agreement by which I am to receive consideration in exchange for procuring this policy; and

(iii) The borrower has an insurable interest in the insured." [2009 c 104 § 12.]

48.102.100 Notice to insured of alternative transactions—Document approved by commissioner. (1) With respect to each policy issued by an insurance company, the insurance company shall notify the owner of an individual life insurance policy when the insured person under such a policy is age sixty or older, or is known to be terminally ill or chronically ill, that there may be alternative transactions available to that owner at the time of each of the following:

(a) When a life insurance company receives from such an owner a request to surrender, in whole or in part, an individual policy;

(b) When a life insurance company receives from such an owner a request to receive an accelerated death benefit under an individual policy;

(c) When a life insurance company sends to such an owner all notices of lapse of an individual policy; or

(d) At any other time that the commissioner may require by rule.

(2)(a) The commissioner shall approve a document calculated to appraise the consumer of his or her rights as an owner of a life insurance policy. The document shall be made available at no cost to all insurance companies and life insurance producers and written in lay terms.

(b) The document shall advise the consumer:

(i) That life insurance is a critical part of a broader financial plan, and that the consumer is encouraged, and has a right, to seek additional financial advice and opinions;

(ii) That possible alternatives to lapse exist; and

(iii) Of the definitions of common industry terms.

(c) In addition to the information described in (a) and (b) of this subsection, the document must contain the following statement in large, bold, or otherwise conspicuous typeface calculated to draw the eye: "Life insurance is a critical part of a broader financial plan. There are many options available, and you have the right to shop around and seek advice from different financial advisers in order to find the option best suited to your needs."

(d) The document may include brief descriptions of common products available from providers. These products must be discussed in general terms for informative purposes only, and not identifiable to any specific provider.

(e) The document will be considered part of the notice required in subsection (1) of this section. [2009 c 104 § 13.]

48.102.110 General rules. (1) A provider entering into a life settlement contract with any owner of a policy, wherein the insured is terminally or chronically ill, shall first obtain:

(a) If the owner is the insured, a written statement from a licensed attending physician that the owner is of sound mind and under no constraint or undue influence to enter into a settlement contract; and

(b) A document in which the insured consents to the release of his or her medical records to a provider, settlement broker, or insurance producer and, if the policy was issued less than two years from the date of application for a settlement contract, to the insurance company that issued the policy.

(2) The insurer shall respond to a request for verification of coverage submitted by a provider, settlement broker, or life insurance producer not later than thirty calendar days of the date the request is received. The request for verification of coverage must be made on a form approved by the commissioner. The insurer shall complete and issue the verification of coverage or indicate in which respects it is unable to respond. In its response, the insurer shall indicate whether,

based on the medical evidence and documents provided, the insurer intends to pursue an investigation at this time regarding the validity of the insurance contract.

(3) Before or at the time of execution of the settlement contract, the provider shall obtain a witnessed document in which the owner consents to the settlement contract, represents that the owner has a full and complete understanding of the settlement contract, that the owner has a full and complete understanding of the benefits of the policy and acknowledges that the owner is entering into the settlement contract freely and voluntarily, and, for persons with a terminal or chronic illness or condition, acknowledges that the insured has a terminal or chronic illness and that the terminal or chronic illness or condition was diagnosed after the policy was issued.

(4) The insurer shall not unreasonably delay effecting change of ownership or beneficiary with any life settlement contract lawfully entered into in this state or with a resident of this state.

(5) If a settlement broker or life insurance producer performs any of these activities required of the provider, the provider is deemed to have fulfilled the requirements of this section.

(6) If a broker performs the verification of coverage activities required of the provider, the provider has fulfilled the requirements of RCW 48.102.080(1).

(7) Within twenty days after an owner executes the life settlement contract, the provider shall give written notice to the insurer that issued that insurance policy that the policy has become subject to a life settlement contract. The notice shall be accompanied by the documents required by RCW 48.102.090(2).

(8) All medical information solicited or obtained by any licensee shall be subject to the applicable provision of state law relating to confidentiality of medical information, if not otherwise provided in this chapter.

(9) All life settlement contracts entered into in this state shall provide that the owner may rescind the contract on or before fifteen days after the date it is executed by all parties thereto. Rescission, if exercised by the owner, is effective only if both notice of the rescission is given, and the owner repays all proceeds and any premiums, loans, and loan interest paid on account of the provider within the rescission period. If the insured dies during the rescission period, the contract is considered rescinded subject to repayment by the owner or the owner's estate of all proceeds and any premiums, loans, and loan interest to the provider.

(10) Within three business days after receipt from the owner of documents to effect the transfer of the insurance policy, the provider shall pay the proceeds of the settlement to an escrow or trust account managed by a trustee or escrow agent in a state or federally chartered financial institution pending acknowledgement of the transfer by the issuer of the policy. The trustee or escrow agent shall be required to transfer the proceeds due to the owner within three business days of acknowledgement of the transfer from the insurer.

(11) Failure to tender the life settlement contract proceeds to the owner by the date disclosed to the owner renders the contract voidable by the owner for lack of consideration until the time the proceeds are tendered to and accepted by the owner. A failure to give written notice of the right of rescission under this section tolls the right of rescission until thirty days after the written notice of the right of rescission has been given.

(12) Any fee paid by a provider, party, individual, or an owner to a broker in exchange for services provided to the owner pertaining to a life settlement contract shall be computed as a percentage of the offer obtained, not the face value of the policy. This section does not prohibit a broker from reducing the broker's fee below this percentage if the broker so chooses.

(13) The broker shall disclose to the owner anything of value paid or given to a broker, which relate to a life settlement contract.

(14) A person at any time prior to, or at the time of, the application for, or issuance of, a policy, or during a two-year period commencing with the date of issuance of the policy, shall not enter into a life settlement regardless of the date the compensation is to be provided and regardless of the date the assignment, transfer, sale, devise, bequest, or surrender of the policy is to occur. This prohibition shall not apply if the owner certifies to the provider that:

(a) The policy was issued upon the owner's exercise of conversion rights arising out of a group or individual policy, provided the total of the time covered under the conversion policy plus the time covered under the prior policy is at least twenty-four months. The time covered under a group policy must be calculated without regard to a change in insurance carriers, provided the coverage has been continuous and under the same group sponsorship; or

(b) The owner submits independent evidence to the provider that one or more of the following conditions have been met within the two-year period:

(i) The owner or insured is terminally or chronically ill;

(ii) The owner or insured disposes of his or her ownership interests in a closely held corporation, pursuant to the terms of a buyout or other similar agreement in effect at the time the insurance policy was initially issued;

(iii) The owner's spouse dies;

(iv) The owner divorces his or her spouse;

(v) The owner retires from full-time employment;

(vi) The owner becomes physically or mentally disabled and a physician determines that the disability prevents the owner from maintaining full-time employment; or

(vii) A final order, judgment, or decree is entered by a court of competent jurisdiction, on the application of a creditor of the owner, adjudicating the owner bankrupt or insolvent, or approving a petition seeking reorganization of the owner or appointing a receiver, trustee, or liquidator to all or a substantial part of the owner's assets;

(c) Copies of the independent evidence required by (b) of this subsection shall be submitted to the insurer when the provider submits a request to the insurer for verification of coverage. The copies shall be accompanied by a letter of attestation from the provider that the copies are true and correct copies of the documents received by the provider. This section does not prohibit an insurer from exercising its right to contest the validity of any policy;

(d) If the provider submits to the insurer a copy of independent evidence provided for in (b)(i) of this subsection when the provider submits a request to the insurer to effect the transfer of the policy to the provider, the copy is deemed

to establish that the settlement contract satisfies the requirements of this section. [2009 c 104 § 14.]

48.102.120 Conflict of laws. (1) If there is more than one owner on a single policy, and the owners are residents of different states, the life settlement contract shall be governed by the law of the state in which the owner having the largest percentage ownership resides or, if the owners hold equal ownership, the state of residence of one owner agreed upon in writing by all of the owners. The law of the state of the insured shall govern in the event that equal owners fail to agree in writing upon a state of residence for jurisdictional purposes.

(2) A provider from this state who enters into a life settlement contract with an owner who is a resident of another state that has enacted statutes or adopted regulations governing life settlement contracts, shall be governed in the effectuation of that life settlement contract by the statutes and regulations of the owner's state of residence. If the state in which the owner is a resident has not enacted statutes or regulations governing life settlement contracts, the provider shall give the owner notice that neither state regulates the transaction upon which he or she is entering. For transactions in those states, however, the provider is to maintain all records required if the transactions were executed in the state of residence. The forms used in those states need not be approved by the commissioner.

(3) If there is a conflict in the laws that apply to an owner and a purchaser in any individual transaction, the laws of the state that apply to the owner shall take precedence and the provider shall comply with those laws. [2009 c 104 § 15.]

48.102.130 Prohibited practices. (1) It is unlawful for any person to:

(a) Enter into a life settlement contract if such person knows or reasonably should have known that the life insurance policy was obtained by means of a false, deceptive or misleading application for such policy;

(b) Engage in any transaction, practice, or course of business if such person knows or reasonably should have known that the intent was to avoid the notice requirements of this chapter;

(c) Engage in any fraudulent act or practice in connection with any transaction relating to any settlement involving an owner who is a resident of this state;

(d) Issue, solicit, market, or otherwise promote the purchase of an insurance policy, not previously issued, for the sole purpose of, or with the primary emphasis on, settling the policy;

(e) If providing premium financing, receive any proceeds, fees, or other consideration from the policy or owner of the policy that are in addition to the amounts required to pay principal, interest, and any costs or expenses incurred by the lender or borrower in connection with the premium finance agreement, except for the event of a default, unless either the default on such a loan or transfer of the policy occurs pursuant to an agreement or understanding with any other person for the purpose of evading regulation under this chapter. Any payments, charges, fees, or other amounts received by a person providing premium financing in violation of this subsection shall be remitted to the original owner of the policy or to the original owner's estate if the original owner is not living at the time of the determination of overpayment;

(f) With respect to any settlement contract or insurance policy and a broker, knowingly solicit an offer from, effectuate a life settlement contract with, or make a sale to any provider, financing entity, or related provider trust that is controlling, controlled by, or under common control with such broker unless this relationship is disclosed to the owner;

(g) With respect to any life settlement contract or insurance policy and a provider, knowingly enter into a life settlement contract with an owner, if, in connection with such life settlement contract, anything of value will be paid to a broker that is controlling, controlled by, or under common control with such provider or the financing entity or related provider trust that is involved in such settlement contract, unless this relationship is disclosed to the owner;

(h) With respect to a provider, enter into a life settlement contract unless the life settlement promotional, advertising, and marketing materials, as may be prescribed by rule, have been filed with the commissioner. In no event shall any marketing materials expressly reference that the insurance is "free" for any period of time. The inclusion of any reference in the marketing materials that would cause an owner to reasonably believe that the insurance is free for any period of time is a violation of this chapter;

(i) With respect to any life insurance producer, insurance company, broker, or provider make any statement or representation to the applicant or policyholder in connection with the sale or financing of a life insurance policy to the effect that the insurance is free or without cost to the policyholder for any period of time unless provided in the policy; or

(j) With respect to an insurer, engage in any transaction, act, practice, or course of business or dealing which restricts, limits, or impairs in any way the lawful transfer of ownership, change of beneficiary, or assignment of a policy.

(2) A violation of this section constitutes a fraudulent life settlement act. [2009 c 104 § 16.]

48.102.140 Fraud prevention and control. (1)(a) A person shall not commit a fraudulent life settlement act.

(b) A person shall not knowingly and intentionally interfere with the enforcement of this chapter or investigations of suspected or actual violations of this chapter.

(c) A person in the business of life settlements shall not knowingly or intentionally permit any person convicted of a felony involving dishonesty or breach of trust to participate in the business of life settlements.

(2)(a) Life settlement contracts and applications for life settlement contracts, regardless of the form of transmission, shall contain the following statement or a substantially similar statement:

"Any person who knowingly presents false information in an application for insurance or life settlement contract is guilty of a crime and may be subject to fines and confinement in prison."

(b) The lack of a statement as required in (a) of this subsection does not constitute a defense in any prosecution for a fraudulent life settlement act.

(3)(a) Any person engaged in the business of life settlements having knowledge or a reasonable belief that a fraudulent life settlement act is being, will be, or has been committed shall provide to the commissioner the information required by, and in a manner prescribed by, the commissioner.

(b) Any other person having knowledge or a reasonable belief that a fraudulent life settlement act is being, will be, or has been committed may provide to the commissioner the information required by, and in a manner prescribed by, the commissioner.

(4)(a) Civil liability shall not be imposed on and no cause of action shall arise from a person's furnishing information concerning suspected, anticipated, or completed fraudulent life settlement acts or suspected or completed fraudulent insurance acts, if the information is provided to or received from:

(i) The commissioner or the commissioner's employees, agents, or representatives;

(ii) Federal, state, or local law enforcement or regulatory officials or their employees, agents, or representatives;

(iii) A person involved in the prevention and detection of fraudulent life settlement acts or that person's agents, employees, or representatives;

(iv) Any regulatory body or their employees, agents, or representatives, overseeing life insurance, life settlements, securities, or investment fraud;

(v) The life insurer that issued the life insurance policy covering the life of the insured; or

(vi) Either a broker or provider, or both and any agents, employees, or representatives.

(b) Subsection (4)(a) of this section shall not apply to statements made with actual malice. In an action brought against a person for filing a report or furnishing other information concerning a fraudulent life settlement act or a fraudulent insurance act, the party bringing the action shall plead specifically any allegation that (a) of this subsection does not apply because the person filing the report or furnishing the information did so with actual malice.

(c) A person identified in (a) of this subsection shall be entitled to an award of attorneys' fees and costs if he or she is the prevailing party in a civil cause of action for libel, slander, or any other relevant tort arising out of activities in carrying out the provisions of this chapter and the party bringing the action was not substantially justified in doing so. For purposes of this section a proceeding is "substantially justified" if it had a reasonable basis in law or fact at the time that it was initiated.

(d) This section does not abrogate or modify common law or statutory privileges or immunities enjoyed by a person described in (a) of this subsection.

(5)(a) The documents and evidence provided pursuant to subsection (4) of this section or obtained by the commissioner in an investigation of suspected or actual fraudulent life settlement acts shall be privileged and confidential and shall not be a public record and shall not be subject to discovery or subpoena in a civil or criminal action.

(b) Subsection (5)(a) of this section does not prohibit release by the commissioner of documents and evidence obtained in an investigation of suspected or actual fraudulent life settlement acts:

(i) In administrative or judicial proceedings to enforce laws administered by the commissioner;

(ii) To federal, state, or local law enforcement or regulatory agencies, to an organization established for the purpose of detecting and preventing fraudulent life settlement acts, or to the national association of insurance commissioners; or

(iii) At the discretion of the commissioner, to a person in the business of life settlements that is aggrieved by a fraudulent life settlement act.

(c) Release of documents and evidence under (b) of this subsection does not abrogate or modify the privilege granted in (a) of this subsection.

(6) This chapter does not:

(a) Preempt the authority or relieve the duty of other law enforcement or regulatory agencies to investigate, examine, and prosecute suspected violations of law;

(b) Preempt, supersede, or limit any provision of chapter 21.20 RCW or any rule, order, or notice issued thereunder;

(c) Prevent or prohibit a person from disclosing voluntarily information concerning life settlement fraud to a law enforcement or regulatory agency other than the commissioner; or

(d) Limit the powers granted elsewhere by the laws of this state to the commissioner or an insurance fraud unit to investigate and examine possible violations of law and to take appropriate action against wrongdoers.

(7)(a) Providers and brokers shall have in place antifraud initiatives reasonably calculated to detect, prosecute, and prevent fraudulent life settlement acts. At the discretion of the commissioner, the commissioner may order, or either a broker or provider, or both may request and the commissioner may grant, such modifications of the following required initiatives as necessary to ensure an effective antifraud program. The modifications may be more or less restrictive than the required initiatives so long as the modifications may reasonably be expected to accomplish the purpose of this section. Antifraud initiatives shall include:

(i) Fraud investigators, who may be provider or broker employees or independent contractors; and

(ii) An antifraud plan, which shall be submitted to the commissioner. The antifraud plan shall include, but not be limited to:

(A) A description of the procedures for detecting and investigating possible fraudulent life settlement acts and procedures for resolving material inconsistencies between medical records and insurance applications;

(B) A description of the procedures for reporting possible fraudulent life settlement acts to the commissioner;

(C) A description of the plan for antifraud education and training of underwriters and other personnel; and

(D) A description or chart outlining the organizational arrangement of the antifraud personnel who are responsible for the investigation and reporting of possible fraudulent life settlement acts and investigating unresolved material inconsistencies between medical records and insurance applications.

(b) Antifraud plans submitted to the commissioner shall be privileged and confidential and shall not be a public record and shall not be subject to discovery or subpoena in a civil or criminal action. [2009 c 104 § 17.]

48.102.150 Enforcement. (1) The commissioner may conduct investigations to determine whether any person has violated any provision of this chapter.

(2) If the commissioner has cause to believe that any person is violating or is about to violate any provision of this title or any regulation or order of the commissioner, the commissioner may:

(a) Issue a cease and desist order; and/or

(b) Bring an action in any court of competent jurisdiction to enjoin the person from continuing the violation or doing any action in furtherance thereof. [2009 c 104 § 18.]

48.102.160 Penalties. (1) For the purpose of this section, an act is committed in this state if it is committed, in whole or in part, in the state of Washington, or affects persons or property within this state and relates to or involves a life settlement contract.

(2) It is a violation of this chapter for any person, provider, broker, or any other party related to the business of life settlements, to commit a fraudulent life settlement act.

(3) For criminal liability purposes, a person that knowingly commits a fraudulent life settlement act is guilty of a class B felony punishable under chapter 9A.20 RCW.

(4) Any person who knowingly acts as a life settlement provider without being licensed by the commissioner is guilty of a class B felony punishable under chapter 9A.20 RCW.

(5) Any person who knowingly acts as a life settlement broker without the proper authorization under this chapter is guilty of a class B felony punishable under chapter 9A.20 RCW.

(6) Any criminal penalty imposed under this section is in addition to, and not in lieu of, any other civil or administrative penalty or sanction otherwise authorized under state law.

(7) If the commissioner has cause to believe that any person has:

(a) Knowingly acted as a life settlement provider without being licensed by the commissioner; or

(b) Knowingly acted as a life settlement broker without the proper authorization under RCW 48.102.021;

the commissioner may assess a civil penalty of not more than twenty-five thousand dollars for each violation, after providing notice and an opportunity for a hearing in accordance with chapters 34.05 and 48.04 RCW.

(8) Upon failure to pay a civil penalty when due, the attorney general may bring a civil action on behalf of the commissioner to recover the unpaid penalty. Any amounts collected by the commissioner must be paid to the state treasurer for the account of the general fund. [2009 c 104 § 19.]

48.102.170 Authority to adopt rules. The commissioner may adopt rules implementing and administering this chapter including, but not limited to:

(1) Establishing standards for evaluating reasonableness of payments under life settlement contracts for persons who are terminally ill or chronically ill including, but not limited to, regulation of discount rates used to determine the amount paid in exchange for assignment, transfer, sale, devise, or bequest of a benefit under a life insurance policy insuring the life of a person that is chronically or terminally ill;

(2) Requiring a bond or other mechanism for financial accountability for life settlement providers; and

(3) Governing the activities, relationships, and responsibilities of providers, brokers, insurers, and their agents. [2009 c 104 § 20.]

48.102.180 Unfair trade practices. The legislature finds that the practices covered by this chapter are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. A violation of this chapter is not reasonable in relation to the development and preservation of business and is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying the consumer protection act, chapter 19.86 RCW. [2009 c 104 § 21.]

48.102.190 Existing viatical settlement licences—July 26, 2009. (1) All viatical settlement brokers' licenses that are in effect on July 26, 2009, shall expire upon July 26, 2009.

(2) All viatical settlement providers' licenses that are in effect on July 26, 2009, shall be converted to a life settlement provider license and upon the next renewal date of the license the life settlement provider must be in compliance with the requirements to be licensed as a life settlement provider under RCW 48.102.011.

(3) A provider lawfully transacting business in this state prior to July 26, 2009, may continue to do so if the provider submits a completed application and pays the required fee to the commissioner within thirty days of July 26, 2009. A provider that has submitted an application and paid the required fee to the commissioner within thirty days of July 26, 2009, may continue to act as a provider for an additional ninety days from the receipt of the application by the commissioner and payment of the required fee, or approval or denial of the license by the commissioner, whichever is earlier. Any person transacting business in this state under this subsection must comply with all other requirements of this chapter. [2009 c 104 § 22.]

48.102.193 Existing rights or liabilities—July 26, 2009. Chapter 104, Laws of 2009 does not affect any existing right acquired or liability or obligation incurred under the sections repealed in chapter 104, Laws of 2009 or under any rule or order adopted under those sections, nor does it affect any proceeding instituted under those sections. [2009 c 104 § 26.]

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

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

Chapter 48.135 RCW
INSURANCE FRAUD PROGRAM

Sections

48.135.010 Definitions.

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

(1) "Insurance fraud" means an act or omission committed by a person who, knowingly, and with intent to defraud, commits, or conceals any material information concerning, one or more of the following:

(a) Presenting, causing to be presented, or preparing with knowledge or belief that it will be presented to or by an insurer, insurance producer, or surplus line broker, false information as part of, in support of, or concerning a fact material to one or more of the following:

(i) An application for the issuance or renewal of an insurance policy;

(ii) The rating of an insurance policy or contract;

(iii) A claim for payment or benefit pursuant to an insurance policy;

(iv) Premiums paid on an insurance policy;

(v) Payments made in accordance with the terms of an insurance policy; or

(vi) The reinstatement of an insurance policy;

(b) Willful embezzlement, abstracting, purloining, or conversion of moneys, funds, premiums, credits, or other property of an insurer or person engaged in the business of insurance; or

(c) Attempting to commit, aiding or abetting in the commission of, or conspiracy to commit the acts or omissions specified in this subsection.

The definition of insurance fraud is for illustrative purposes only under this chapter to describe the nature of the behavior to be reported and investigated, and is not intended in any manner to create or modify the definition of any existing criminal acts nor to create or modify the burdens of proof in any criminal prosecution brought as a result of an investigation under this chapter.

(2) "Insurer" means an insurance company authorized under chapter 48.05 RCW, a health care service contractor registered under chapter 48.44 RCW, and a health care maintenance organization registered under chapter 48.46 RCW. [2009 c 162 § 32; 2008 c 217 § 97; 2006 c 284 § 2.]

Effective date—2009 c 162: See note following RCW 48.03.020.

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

Chapter 48.150 RCW

DIRECT PATIENT-PROVIDER PRIMARY HEALTH CARE

Sections

48.150.010 Definitions.
48.150.040 Prohibited and authorized practices.
48.150.050 Acceptance or discontinuation of patients—Third-party payments.

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

(1) "Direct agreement" means a written agreement entered into between a direct practice and an individual direct patient, or the parent or legal guardian of the direct patient or a family of direct patients, whereby the direct practice charges a direct fee as consideration for being available to provide and providing primary care services to the individual direct patient. A direct agreement must (a) describe the specific health care services the direct practice will provide; and (b) be terminable at will upon written notice by the direct patient.

(2) "Direct fee" means a fee charged by a direct practice as consideration for being available to provide and providing primary care services as specified in a direct agreement.

(3) "Direct patient" means a person who is party to a direct agreement and is entitled to receive primary care services under the direct agreement from the direct practice.

(4) "Direct patient-provider primary care practice" and "direct practice" means a provider, group, or entity that meets the following criteria in (a), (b), (c), and (d) of this subsection:

(a)(i) A health care provider who furnishes primary care services through a direct agreement;

(ii) A group of health care providers who furnish primary care services through a direct agreement; or

(iii) An entity that sponsors, employs, or is otherwise affiliated with a group of health care providers who furnish only primary care services through a direct agreement, which entity is wholly owned by the group of health care providers or is a nonprofit corporation exempt from taxation under section 501(c)(3) of the internal revenue code, and is not otherwise regulated as a health care service contractor, health maintenance organization, or disability insurer under Title 48 RCW. Such entity is not prohibited from sponsoring, employing, or being otherwise affiliated with other types of health care providers not engaged in a direct practice;

(b) Enters into direct agreements with direct patients or parents or legal guardians of direct patients;

(c) Does not accept payment for health care services provided to direct patients from any entity subject to regulation under Title 48 RCW or plans administered under chapter 41.05, 70.47, or 70.47A RCW; and

(d) Does not provide, in consideration for the direct fee, services, procedures, or supplies such as prescription drugs, hospitalization costs, major surgery, dialysis, high level radiology (CT, MRI, PET scans or invasive radiology), rehabilitation services, procedures requiring general anesthesia, or similar advanced procedures, services, or supplies.

(5) "Health care provider" or "provider" means a person regulated under Title 18 RCW or chapter 70.127 RCW to practice health or health-related services or otherwise practicing health care services in this state consistent with state law.

(6) "Health carrier" or "carrier" has the same meaning as in RCW 48.43.005.

(7) "Network" means the group of participating providers and facilities providing health care services to a particular health carrier's health plan or to plans administered under chapter 41.05, 70.47, or 70.47A RCW.

(8) "Primary care" means routine health care services, including screening, assessment, diagnosis, and treatment for the purpose of promotion of health, and detection and management of disease or injury. [2009 c 552 § 1; 2007 c 267 § 3.]

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

48.150.040 Prohibited and authorized practices. (1) Direct practices may not:

(a) Enter into a participating provider contract as defined in RCW 48.44.010 or 48.46.020 with any carrier or with any carrier's contractor or subcontractor, or plans administered under chapter 41.05, 70.47, or 70.47A RCW, to provide health care services through a direct agreement except as set forth in subsection (2) of this section;

(b) Submit a claim for payment to any carrier or any carrier's contractor or subcontractor, or plans administered under chapter 41.05, 70.47, or 70.47A RCW, for health care services provided to direct patients as covered by their agreement;

(c) With respect to services provided through a direct agreement, be identified by a carrier or any carrier's contractor or subcontractor, or plans administered under chapter 41.05, 70.47, or 70.47A RCW, as a participant in the carrier's or any carrier's contractor or subcontractor network for purposes of determining network adequacy or being available for selection by an enrollee under a carrier's benefit plan; or

(d) Pay for health care services covered by a direct agreement rendered to direct patients by providers other than the providers in the direct practice or their employees, except as described in subsection (2)(b) of this section.

(2) Direct practices and providers may:

(a) Enter into a participating provider contract as defined by RCW 48.44.010 and 48.46.020 or plans administered under chapter 41.05, 70.47, or 70.47A RCW for purposes other than payment of claims for services provided to direct patients through a direct agreement. Such providers shall be subject to all other provisions of the participating provider contract applicable to participating providers including but not limited to the right to:

(i) Make referrals to other participating providers;

(ii) Admit the carrier's members to participating hospitals and other health care facilities;

(iii) Prescribe prescription drugs; and

(iv) Implement other customary provisions of the contract not dealing with reimbursement of services;

(b) Pay for charges associated with the provision of routine lab and imaging services. In aggregate such payments per year per direct patient are not to exceed fifteen percent of the total annual direct fee charged that direct patient. Exceptions to this limitation may occur in the event of short-term equipment failure if such failure prevents the provision of care that should not be delayed; and

(c) Charge an additional fee to direct patients for supplies, medications, and specific vaccines provided to direct patients that are specifically excluded under the agreement, provided the direct practice notifies the direct patient of the additional charge, prior to their administration or delivery. [2009 c 552 § 2; 2007 c 267 § 6.]

48.150.050 Acceptance or discontinuation of patients—Third-party payments. (1) Direct practices may not decline to accept new direct patients or discontinue care to existing patients solely because of the patient's health status. A direct practice may decline to accept a patient if the practice has reached its maximum capacity, or if the patient's medical condition is such that the provider is unable to provide the appropriate level and type of health care services in the direct practice. So long as the direct practice provides the patient notice and opportunity to obtain care from another physician, the direct practice may discontinue care for direct patients if: (a) The patient fails to pay the direct fee under the terms required by the direct agreement; (b) the patient has performed an act that constitutes fraud; (c) the patient repeatedly fails to comply with the recommended treatment plan; (d) the patient is abusive and presents an emotional or physical danger to the staff or other patients of the direct practice; or (e) the direct practice discontinues operation as a direct practice.

(2) Subject to the restrictions established in this chapter, direct practices may accept payment of direct fees directly or indirectly from third parties. A direct practice may accept a direct fee paid by an employer on behalf of an employee who is a direct patient. However, a direct practice shall not enter into a contract with an employer relating to direct practice agreements between the direct practice and employees of that employer, other than to establish the timing and method of the payment of the direct fee by the employer. [2009 c 552 § 3; 2007 c 267 § 7.]

Chapter 48.155 RCW

HEALTH CARE DISCOUNT PLAN ORGANIZATION ACT

Sections

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48.155.001 Short title. This chapter may be known and cited as the Washington health care discount plan organization act. [2009 c 175 § 1.]

48.155.003 Purpose. The purposes of this chapter are to promote the public interest by establishing standards for discount plan organizations, to protect consumers from unfair or deceptive marketing, sales, or enrollment practices, and to facilitate consumer understanding of the role and function of discount plan organizations in providing discounts on charges for health care services. [2009 c 175 § 2.]

48.155.007 Rules. The commissioner may adopt rules to implement this chapter. [2009 c 175 § 18.]

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

(1) "Affiliate" means a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

(2) "Commissioner" means the Washington state insurance commissioner.

(3)(a) "Control" or "controlled by" or "under common control with" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person.

(b) Control exists when any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing ten percent or more of the voting securities of any other person. A presumption of control may be rebutted by a showing made in the manner provided by RCW 48.31B.005(2) and 48.31B.025(11) that control does not exist in fact. The commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support the determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

(4)(a) "Discount plan" means a business arrangement or contract in which a person or organization, in exchange for fees, dues, charges, or other consideration, provides or purports to provide discounts to its members on charges by providers for health care services.

(b) "Discount plan" does not include:

(i) A plan that does not charge a membership or other fee to use the plan's discount card;

(ii) A patient access program as defined in this chapter;

(iii) A medicare prescription drug plan as defined in this chapter; or

(iv) A discount plan offered by a health carrier authorized under chapter 48.20, 48.21, 48.44, or 48.46 RCW.

(5)(a) "Discount plan organization" means a person that, in exchange for fees, dues, charges, or other consideration, provides or purports to provide access to discounts to its members on charges by providers for health care services. "Discount plan organization" also means a person or organization that contracts with providers, provider networks, or other discount plan organizations to offer discounts on health care services to its members. This term also includes all persons that determine the charge to or other consideration paid by members.

(b) "Discount plan organization" does not mean:

(i) Pharmacy benefit managers;

(ii) Health care provider networks, when the network's only involvement in discount plans is contracting with the plan to provide discounts to the plan's members;

(iii) Marketers who market the discount plans of discount plan organizations which are licensed under to this chapter as long as all written communications of the marketer in connection with a discount plan clearly identify the licensed discount plan organization as the responsible entity; or

(iv) Health carriers, if the discount on health care services is offered by a health carrier authorized under chapter 48.20, 48.21, 48.44, or 48.46 RCW.

(6) "Health care facility" or "facility" has the same meaning as in RCW 48.43.005(15).

(7) "Health care provider" or "provider" has the same meaning as in RCW 48.43.005(16).

(8) "Health care provider network," "provider network," or "network" means any network of health care providers, including any person or entity that negotiates directly or indirectly with a discount plan organization on behalf of more than one provider to provide health care services to members.

(9) "Health care services" has the same meaning as in RCW 48.43.005(17).

(10) "Health carrier" or "carrier" has the same meaning as in RCW 48.43.005(18).

(11) "Marketer" means a person or entity that markets, promotes, sells, or distributes a discount plan, including a contracted marketing organization and a private label entity that places its name on and markets or distributes a discount plan pursuant to a marketing agreement with a discount plan organization.

(12) "Medicare prescription drug plan" means a plan that provides a medicare part D prescription drug benefit in accordance with the requirements of the federal medicare prescription drug improvement and modernization act of 2003.

(13) "Member" means any individual who pays fees, dues, charges, or other consideration for the right to receive the benefits of a discount plan, but does not include any individual who enrolls in a patient access program.

(14) "Patient access program" means a voluntary program sponsored by a pharmaceutical manufacturer, or a consortium of pharmaceutical manufacturers, that provides free or discounted health care products for no additional consideration directly to low-income or uninsured individuals either through a discount card or direct shipment.

(15) "Person" means an individual, a corporation, a governmental entity, a partnership, an association, a joint venture, a joint stock company, a trust, an unincorporated organization, any similar entity, or any combination of the persons listed in this subsection.

(16)(a) "Pharmacy benefit manager" means a person that performs pharmacy benefit management for a covered entity.

(b) For purposes of this subsection, a "covered entity" means an insurer, a health care service contractor, a health maintenance organization, or a multiple employer welfare arrangement licensed, certified, or registered under the provisions of this title. "Covered entity" also means a health program administered by the state as a provider of health coverage, a single employer that provides health coverage to its employees, or a labor union that provides health coverage to its members as part of a collective bargaining agreement. [2009 c 175 § 3.]

48.155.015 Application of chapter. (1) This chapter applies to all discount plans and all discount plan organizations doing business in or from this state or that affect sub-

jects located wholly or in part or to be performed within this state, and all persons having to do with this business.

(2) A discount plan organization that is a health carrier with a license, certificate of authority, or registration under RCW 48.05.030 or chapter 48.31C RCW:

(a) Is not required to obtain a license under RCW 48.155.020, except that any of its affiliates that operate as a discount plan organization in this state must obtain a license under RCW 48.155.020 and comply with all other provisions of this chapter;

(b) Is required to comply with RCW 48.155.060 through 48.155.090 and report, in the form and manner as the commissioner may require, any of the information described in RCW 48.155.110(2) (b), (c), or (d) that is not otherwise already reported; and

(c) Is subject to RCW 48.155.130 and 48.155.140. [2009 c 175 § 4.]

48.155.020 License required—Application—Review—Annual renewal—Required disclosures. (1) Before conducting discount plan business to which this chapter applies, a person shall obtain a license from the commissioner to operate as a discount plan organization.

(2) Except as provided in subsection (3) of this section, each application for a license to operate as a discount plan organization:

(a) Must be in a form prescribed by the commissioner and verified by an officer or authorized representative of the applicant; and

(b) Must demonstrate, set forth, or be accompanied by the following:

(i) The two hundred fifty dollar application fee, which must be deposited into the general fund;

(ii) A copy of the organization documents of the applicant, such as the articles of incorporation, including all amendments;

(iii) A copy of the applicant's bylaws or other enabling documents that establish organizational structure;

(iv) The applicant's federal identification number, business address, and mailing address;

(v)(A) A list of names, addresses, official positions, and biographical information of the individuals who are responsible for conducting the applicant's affairs, including all members of the board of directors, board of trustees, executive committee, or other governing board or committee, the officers, contracted management company personnel, and any person or entity owning or having the right to acquire ten percent or more of the voting securities of the applicant; and

(B) A disclosure in the listing of the extent and nature of any contracts or arrangements between any individual who is responsible for conducting the applicant's affairs and the discount plan organization, including all possible conflicts of interest;

(vi) A complete biographical statement, on forms prescribed by the commissioner, with respect to each individual identified under (b)(v) of this subsection;

(vii) A statement generally describing the applicant, its facilities and personnel, and the health care services for which a discount will be made available under the discount plan;

(viii) A copy of the form of all contracts made or to be made between the applicant and any health care providers or health care provider networks regarding the provision of health care services to members and discounts to be made available to members;

(ix) A copy of the form of any contract made or arrangement to be made between the applicant and any individual listed in (b)(v) of this subsection;

(x) A list identifying by name, address, telephone number, and e-mail address all persons who will market each discount plan offered by the applicant. If the person who will market a discount plan is an entity, only the entity must be identified. This list must be maintained and updated within sixty days of any change in the information. An updated list must be sent to the commissioner as part of the discount plan organization's renewal application under (b)(vii) of this subsection;

(xi) A copy of the form of any contract made or to be made between the applicant and any person, corporation, partnership, or other entity for the performance on the applicant's behalf of any function, including marketing, administration, enrollment, and subcontracting for the provision of health care services to members and discounts to be made available to members;

(xii) A copy of the applicant's most recent financial statements audited by an independent certified public accountant, except that, subject to the approval of the commissioner, an applicant that is an affiliate of a parent entity that is publicly traded and that prepares audited financial statements reflecting the consolidated operations of the parent entity may submit the audited financial statement of the parent entity and a written guaranty that the minimum capital requirements required under RCW 48.155.030 will be met by the parent entity instead of the audited financial statement of the applicant;

(xiii) A description of the proposed methods of marketing including, but not limited to, describing the use of marketers, use of the internet, sales by telephone, electronic mail, or facsimile machine, and use of salespersons to market the discount plan benefits;

(xiv) A description of the member complaint procedures which must be established and maintained by the applicant;

(xv) The name and address of the applicant's Washington statutory agent for service of process, notice, or demand or, if not domiciled in this state, a power of attorney duly executed by the applicant, appointing the commissioner and duly authorized deputies as the true and lawful attorney of the applicant in and for this state upon whom all law process in any legal action or proceeding against the discount plan organization on a cause of action arising in this state may be served; and

(xvi) Any other information the commissioner may reasonably require.

(3)(a) Upon application to and approval by the commissioner and payment of the applicable fees, a discount plan organization that holds a current license or other form of authority from another state to operate as a discount plan organization, at the commissioner's discretion, may not be required to submit the information required under subsection (2) of this section in order to obtain a license under this section if the commissioner is satisfied that the other state's

requirements, at a minimum, are equivalent to those required under subsection (2) of this section or the commissioner is satisfied that the other state's requirements are sufficient to protect the interests of the residents of this state.

(b) Whenever the discount plan organization loses its license or other form of authority in that other state to operate as a discount plan organization, or is the subject of any disciplinary administrative proceeding related to the organization's operating as a discount plan organization in that other state, the discount plan organization shall immediately notify the commissioner.

(4) After the receipt of an application filed under subsection (2) or (3) of this section, the commissioner shall review the application and notify the applicant of any deficiencies in the application.

(5)(a) Within ninety days after the date of receipt of a completed application, the commissioner shall:

(i) Issue a license if the commissioner is satisfied that the applicant has met the following:

(A) The applicant has fulfilled the requirements of this section and the minimum capital requirements in accordance with RCW 48.155.030; and

(B) The persons who own, control, and manage the applicant are competent and trustworthy and possess managerial experience that would make the proposed operation of the discount plan organization beneficial to discount plan members; or

(ii) Disapprove the application and state the grounds for disapproval.

(b) In making a determination under (a) of this subsection, the commissioner may consider, for example, whether the applicant or an officer or manager of the applicant: (i) Is not financially responsible; (ii) does not have adequate expertise or experience to operate a medical discount plan organization; or (iii) is not of good character. Among the factors that the commissioner may consider in making the determination is whether the applicant or an affiliate or a business formerly owned or managed by the applicant or an officer or manager of the applicant has had a previous application for a license, or other authority, to operate as any entity regulated by the commissioner denied, revoked, suspended, or terminated for cause, or is under investigation for or has been found in violation of a statute or regulation in another jurisdiction within the previous five years.

(6) Prior to licensure by the commissioner, each discount plan organization shall establish an internet web site in order to conform to the requirements of RCW 48.155.070(2).

(7)(a) A license is effective for one year, unless prior to its expiration the license is renewed in accordance with this subsection or suspended or revoked in accordance with subsection (8) of this section.

(b) At least ninety days before a license expires, the discount plan organization shall submit:

(i) A renewal application form; and

(ii) A two hundred dollar renewal application fee for deposit into the general fund.

(c) The commissioner shall renew the license of each holder that meets the requirements of this chapter and pays the appropriate renewal fee required.

(8)(a) The commissioner may suspend the authority of a discount plan organization to enroll new members or refuse to renew or revoke a discount plan organization's license if the commissioner finds that any of the following conditions exist:

(i) The discount plan organization is not operating in compliance with this chapter;

(ii) The discount plan organization does not have the minimum net worth as required under RCW 48.155.030;

(iii) The discount plan organization has advertised, merchandised, or attempted to merchandise its services in such a manner as to misrepresent its services or capacity for service or has engaged in deceptive, misleading, or unfair practices with respect to advertising or merchandising;

(iv) The discount plan organization is not fulfilling its obligations as a discount plan organization; or

(v) The continued operation of the discount plan organization would be hazardous to its members.

(b) If the commissioner has cause to believe that grounds for the nonrenewal, suspension, or revocation of a license exists, the commissioner shall notify the discount plan organization in writing specifically stating the grounds for the refusal to renew or suspension or revocation and may also pursue a hearing on the matter under chapter 48.04 RCW.

(c) When the license of a discount plan organization is nonrenewed, surrendered, or revoked, the discount plan organization shall immediately upon the effective date of the order of revocation or, in the case of a nonrenewal, the date of expiration of the license, stop any further advertising, solicitation, collecting of fees, or renewal of contracts, and proceed to wind up its affairs transacted under the license.

(d)(i) When the commissioner suspends a discount plan organization's authority to enroll new members, the suspension order must specify the period during which the suspension is to be in effect and the conditions, if any, that must be met by the discount plan organization prior to reinstatement of its license to enroll members.

(ii) The commissioner may rescind or modify the order of suspension prior to the expiration of the suspension period.

(iii) The license of a discount plan organization may not be reinstated unless requested by the discount plan organization. The commissioner shall not grant the request for reinstatement if the commissioner finds that the circumstances for which the suspension occurred still exist or are likely to recur.

(9) Each licensed discount plan organization shall notify the commissioner immediately whenever the discount plan organization's license, or other form of authority to operate as a discount plan organization in another state, is suspended, revoked, or nonrenewed in that state.

(10) A health care provider who provides discounts to his or her own patients without any cost or fee of any kind to the patient is not required to obtain and maintain a license under this chapter as a discount plan organization. [2009 c 175 § 5.]

48.155.030 Minimum net worth. (1) Except under subsection (3) of this section, before the commissioner issues a license to any person required to obtain a license under RCW 48.155.020, the person seeking to operate a discount plan organization must have a net worth of at least one hundred fifty thousand dollars.

(2) At all times, except under subsection (3) of this section, each discount plan organization must maintain a net worth of at least one hundred fifty thousand dollars.

(3) By rule of the commissioner, the amounts in subsections (1) and (2) of this section may be adjusted annually for inflation. [2009 c 175 § 6.]

48.155.040 Surety bond—Deposit in lieu of bond. (1) Each licensed discount plan organization shall continuously maintain in force a surety bond in its own name in an amount not less than thirty-five thousand dollars to be used in the discretion of the commissioner to protect the financial interest of Washington members. The bond must be issued by an insurance company licensed to do business in this state.

(2) In lieu of the bond specified in subsection (1) of this section, a licensed discount plan organization may deposit and maintain deposited with the commissioner, or at the discretion of the commissioner, with any organization or trustee acceptable to the commissioner through which a custodial or controlled account is utilized, cash, securities, or any combination of these or other measures that are acceptable to the commissioner which always have a market value of not less than thirty-five thousand dollars.

(3) All income from a deposit made under subsection (2) of this section is an asset of the discount plan organization.

(4) Except for the commissioner, the assets or securities held in this state as a deposit under subsection (1) or (2) of this section are not subject to levy by a judgment creditor or other claimant of the discount plan organization. [2009 c 175 § 7.]

48.155.050 Investigations by commissioner—Organization must maintain detailed books and records. (1) The commissioner may conduct investigations to determine whether any person has violated any provision of this chapter and may, if the commissioner has a reason to believe that the discount plan organization is not complying with the requirements of this chapter, examine the business and affairs of any discount plan organization.

(2) An examination conducted under subsection (1) of this section must be performed in accordance with chapter 48.03 RCW, except that RCW 48.03.060 (1) and (2) shall not be applicable to the examination of persons registered under this chapter.

(3) The commissioner may:

(a) Order any discount plan organization or applicant that operates a discount plan organization to produce any records, books, files, advertising, and solicitation materials or other information; and

(b) Gather evidence and take statements under oath to determine whether the discount plan organization or applicant is in violation of the law or is acting contrary to the public interest.

(4) The discount plan organization or applicant that is the subject of the examination or investigation shall pay the expenses incurred in conducting the examination or investigation. Failure by the discount plan organization or applicant to pay the expenses is grounds for denial or revocation of a license to operate as a discount plan organization.

(5) All discount plan organizations or applicants that are subject to examinations, investigations, or annual reporting requirements under this chapter shall maintain detailed books and records of the following:

(a) Records documenting all Washington transactions, showing all funds received and all funds disbursed to Washington members, prospective members, providers, and provider networks;

(b) All contracts or agreements with providers of the services under a discount plan offered in Washington or sold to Washington residents; and

(c) Telephone scripts for marketing activities to which this chapter applies.

The discount plan organization shall maintain the books and records described in this section, in addition to the books and records required to be maintained under RCW 48.155.070, for a period of at least two years. [2009 c 175 § 8.]

48.155.060 Charges and fees—When writing is required—Cancellation. (1) A discount plan organization may charge a periodic charge as well as a reasonable one-time processing fee of no more than thirty dollars for a discount plan, or such other amount as established by rule, but may not require payment of these or any other charges or fees by direct debit from a banking, credit, or debit card account unless that method of payment is clearly and conspicuously disclosed to the prospective member. All charges and fees must be provided in writing to the member when the member first joins the plan.

(2) When a marketer or discount plan organization solicits a discount plan in conjunction with any other product, all charges that a member or prospective member must pay for each discount plan must be provided in writing as a separate item to the member or prospective member, unless the entire amount of the periodic charge which includes the periodic discount plan charge will be refunded if the member cancels his or her membership in the discount plan organization within the first thirty days after the date of receipt of the written documents for the discount plan as provided in subsection (3) of this section.

(3)(a)(i) If a member cancels his or her membership in the discount plan organization within the first thirty days after the date of receipt of the written documents for the discount plan described in RCW 48.155.090(4), the member must receive a reimbursement of all periodic charges upon return of the discount plan card to the discount plan organization.

(ii)(A) Cancellation occurs when notice of cancellation is given to the discount plan organization.

(B) Notice of cancellation is given when delivered by hand or deposited in a mailbox, properly addressed and postage prepaid to the mailing address of the discount plan organization, or e-mailed to the e-mail address of the discount plan organization.

(iii) A discount plan organization shall return in full any periodic charge charged or collected after the member has given the discount plan organization notice of cancellation.

(b) If the discount plan organization cancels a membership for any reason other than nonpayment of charges by the member, the discount plan organization shall make a pro rata

reimbursement of all periodic charges to the member. [2009 c 175 § 9.]

48.155.070 Written health care provider agreements required—Terms—Internet web site. (1)(a) A discount plan organization shall have a written health care provider agreement with all health care providers for whose health care services it provides access to a discount to its members. The written health care provider agreement may be entered into directly with the health care provider or indirectly with a health care provider network to which the health care provider belongs.

(b) A health care provider agreement between a discount plan organization and a health care provider must provide the following:

(i) A list of the health care services and products to be provided at a discount;

(ii) The amount or amounts of the discounts or, alternatively, a fee schedule that reflects the health care provider's discounted rates; and

(iii) That the health care provider may not charge members more than the discounted rates.

(c) A health care provider agreement between a discount plan organization and a health care provider network must require that the health care provider network have written agreements with its health care providers that:

(i) Contain the provisions described in (b) of this subsection;

(ii) Authorize the health care provider network to contract with the discount plan organization on behalf of the health care provider; and

(iii) Require the health care provider network to maintain an up-to-date list of its contracted health care providers and to provide the list on a monthly basis to the discount plan organization.

(d) A health care provider agreement between a discount plan organization and an entity that contracts with a health care provider network must require that the entity, in its contract with the health care provider network, require the health care provider network to have written agreements with its health care providers that comply with (c) of this subsection.

(e) The discount plan organization shall maintain a copy of each health care provider agreement into which it has entered and shall promptly furnish a copy of each agreement to the commissioner when requested.

(2)(a) Each discount plan organization shall maintain on an internet web site a list of the names and addresses of the health care providers with which it has a current provider agreement directly or through a health care provider network. This list must be updated every thirty days. The internet web site address must be prominently displayed on all of its advertisements, marketing materials, brochures, and discount plan cards.

(b) This subsection applies to those health care providers with which the discount plan organization has a current provider agreement directly as well as those health care providers that are members of a health care provider network with which the discount plan organization has a current provider agreement. [2009 c 175 § 10.]

48.155.080 Marketing products—Directly to consumers—By contract with marketers. (1) A discount plan organization may market its products directly to consumers or contract with marketers for the distribution of its discount plans.

(2)(a) The discount plan organization shall have an executed written agreement with a marketer prior to the marketer's marketing, promoting, selling, or distributing the discount plan organization's discount plans.

(b) The agreement between the discount plan organization and the marketer must prohibit the marketer from using advertising, marketing materials, brochures, and discount plan cards without first having the discount plan organization's approval in writing.

(c) The discount plan organization is bound by and responsible for the activities of a marketer that are within the scope of the marketer's agency relationship with the organization.

(3) A discount plan organization shall approve in writing all advertisements, marketing materials, brochures, and discount cards used by marketers to market, promote, sell, or distribute the discount plan prior to their use.

(4) Upon request, a discount plan organization shall submit to the commissioner all advertising, marketing materials, and brochures used or to be used in connection with the organization's discount plans. [2009 c 175 § 11.]

48.155.090 Communications with regulators and consumers—Restrictions—Required general disclosures. (1)(a) All advertisements, marketing efforts, promotions, marketing materials, discount plan documents, brochures, discount plan cards, and any other communications of a discount plan organization provided to prospective members and members must be truthful and not misleading in fact or in implication.

(b) Any advertisement, marketing material, discount plan document, brochure, discount plan card, or other communication is misleading in fact or in implication if it has a capacity or tendency to mislead or deceive based on the overall impression that it may reasonably be expected to create within the segment of the public to which it is directed.

(c) A discount plan organization shall conduct its business in its own legal name and all written communications from a discount plan to regulators and consumers must prominently display the discount plan organization's full legal name.

(2) A discount plan organization shall not:

(a) Except as otherwise provided in this chapter or as a disclaimer of any relationship between discount plan benefits and insurance, or as a description of an insurance product connected with a discount plan, use in its advertisements, marketing efforts, promotions, marketing materials, discount plan documents, brochures, and discount plan cards the term "insurance";

(b) Describe or characterize the discount plan as being insurance whenever a discount plan is bundled with an insured product and the insurance benefits are incidental to the discount plan benefits;

(c) Use in its advertisements, marketing efforts, promotions, marketing materials, discount plan documents, brochures, and discount plan cards words or phrases that are

commonly associated with the business of insurance, such as the terms "health plan," "coverage," "copay," "copayments," "deductible," "preexisting conditions," "guaranteed issue," "premium," "PPO," "preferred provider organization," or similar terms, in a manner that could reasonably mislead an individual into believing that the discount plan is health insurance;

(d) Use language in its advertisements, marketing efforts, promotions, marketing material, discount plan documents, brochures, and discount plan cards with respect to being licensed by the insurance commissioner's office in a manner that could reasonably mislead an individual into believing that the discount plan is insurance or has been endorsed by the insurance commissioner's office;

(e) Make misleading, deceptive, or fraudulent representations regarding the discount or range of discounts offered by the discount plan or the access to any range of discounts offered by the discount plan;

(f) Have restrictions on access to discount plan providers including, except for hospital services, waiting periods and notification periods; or

(g) Pay health care providers any fees for health care services or collect or accept money from a member to pay a health care provider for health care services provided under the discount plan, unless the discount plan organization has an active certificate of authority or registration in Washington.

(3)(a) Each discount plan organization shall make the following general disclosures in not less than twelve-point type on the first content page of any advertisements, marketing materials, or brochures made available to the public relating to a discount plan, along with any enrollment forms given to a prospective member:

(i) That the plan is a discount plan and is not insurance coverage;

(ii) If true, that the range of discounts for health care services provided under the plan will vary depending on the type of health care provider and health care service received;

(iii) That the discount plan organization does not make payments to providers for the health care services received under the discount plan, unless the discount plan organization has an active certificate of authority or registration, as described in subsection (2)(g) of this section;

(iv) That the plan member is obligated to pay for all health care services, but will receive the stated discount from those health care providers that have a current provider agreement with the discount plan organization; and

(v) The toll-free telephone number and internet web site address for the licensed discount plan organization for prospective members and members to obtain additional information about and assistance with the discount plan and up-to-date lists of health care providers participating in the discount plan.

(b) If the initial contact with a prospective member is by telephone, the disclosures required under (a) of this subsection must be made orally and included in the initial written materials that describe the benefits under the discount plan provided to the prospective or new member.

(4)(a) In addition to the general disclosures required under subsection (3) of this section, each discount plan organization shall send to:

(i) Each prospective member, at their request, information that describes the terms and conditions of the discount plan, including any limitations or restrictions on the refund of any processing fees or periodic charges associated with the discount plan. The written materials presented must not be dependent upon the requestor first making any form of payment or enrolling in the plan; and

(ii) Each new member, within fourteen calendar days of enrollment, written documents that contain all terms and conditions of the discount plan.

(b) The written documents required under (a)(ii) of this subsection must be clear and include the following information:

(i) The name of the member;

(ii) The benefits to be provided under the discount plan;

(iii) Any processing fees and periodic charges associated with the discount plan, including any limitations or restrictions on the refund of any processing fees and periodic charges;

(iv) The mode of payment of any processing fees and periodic charges, such as monthly or quarterly, and procedures for changing the mode of payment;

(v) Any limitations, exclusions, or exceptions regarding the receipt of discount plan benefits;

(vi) Any waiting periods for receiving discounts on hospital services under the discount plan;

(vii) Procedures for obtaining discounts under the discount plan, such as requiring members to contact the discount plan organization to make an appointment with a health care provider on the member's behalf;

(viii) Cancellation procedures, including information on the member's thirty-day cancellation rights and refund requirements and procedures for obtaining refunds;

(ix) Renewal, termination, and cancellation terms and conditions;

(x) Procedures for adding new members to a family discount plan, if applicable;

(xi) Procedures for filing complaints under the discount plan organization's complaint system and information that, if the member remains dissatisfied after completing the organization's complaint system, the plan member may contact the office of the insurance commissioner; and

(xii) The name, telephone number, internet web site address, and mailing address of the licensed discount plan organization or other entity where the member can make inquiries about the plan, or send cancellation notices and file complaints. [2009 c 175 § 12.]

48.155.100 Organization changes require notice to commissioner. Each discount plan organization shall provide the commissioner at least thirty days' advance notice of any change in the discount plan organization's name, address, principal business address, mailing address, toll-free telephone number, or internet web site address. [2009 c 175 § 13.]

48.155.110 Annual report required—Fee—Contents—Failure to file. (1) If the information required in subsection (2) of this section is not provided at the time of renewal of a license under RCW 48.155.020, a discount plan

organization shall file an annual report with the commissioner in the form prescribed by the commissioner no later than March 31st of the following year.

(2) The annual report must be filed with the commissioner, accompanied by the twenty dollar annual reporting fee to be deposited into the general fund. The annual report must include:

(a) Audited financial statements prepared in accordance with generally accepted accounting principles certified by an independent certified public accountant, including the organization's balance sheet, income statement, and statement of changes in cash flow for the preceding year. However, subject to the approval of the commissioner, an organization that is an affiliate of a parent entity that is publicly traded and that prepares audited financial statements reflecting the consolidated operations of the parent entity may submit the audited financial statement of the parent entity and a written guaranty that the minimum capital requirements required under RCW 48.155.030 will be met by the parent entity instead of the audited financial statement of the organization;

(b) If different from the initial application for a license, or at the time of renewal of a license, or the last annual report, as appropriate, a list of the names and residence addresses of all persons responsible for the conduct of the organization's affairs, together with a disclosure of the extent and nature of any contracts or arrangements with these persons and the discount plan organization, including any possible conflicts of interest;

(c) The number of current members the discount plan organization has in the state; and

(d) Any other information relating to the performance of the discount plan organization that may be required by the commissioner.

(3) Any discount plan organization that fails to file an annual report in the form and within the time required by this section is subject to the following:

(a) Monetary penalties of:

(i) Up to five hundred dollars each day for the first ten days during which the violation continues; and

(ii) Up to one thousand dollars each day after the first ten days during which the violation continues; and

(b) Upon notice by the commissioner, loss, suspension, or revocation of its license and authority to enroll new members or to do business in this state while the violation continues. [2009 c 175 § 14.]

48.155.120 Designation of compliance officer. Each discount plan organization shall designate and provide the commissioner with the name, address, and telephone number of the organization's compliance officer responsible for ensuring compliance with this chapter. [2009 c 175 § 15.]

48.155.130 Violation of chapter—Commissioner's authority—Penalties—Criminal sanctions—Civil action for recovery of damages. (1) In lieu of or in addition to suspending or revoking a discount plan organization's license under RCW 48.155.020(8), whenever the commissioner has cause to believe that any person is violating or is about to violate any provision of this chapter or any rules adopted under this chapter or any order of the commissioner, the commissioner may:

(a) Issue a cease and desist order; and

(b) After hearing or with the consent of the discount plan organization and in addition to or in lieu of the suspension, revocation, or refusal to renew any license, impose a monetary penalty of not less than one hundred dollars for each violation and not more than ten thousand dollars for each violation.

(2) A person that willfully operates as or aids and abets another operating as a discount plan organization in violation of RCW 48.155.020(1) commits insurance fraud and is subject to RCW 48.15.020 and 48.15.023, as if the unlicensed discount plan organization were an unauthorized insurer, and the fees, dues, charges, or other consideration collected from the members by the unlicensed discount plan organization or marketer were insurance premiums.

(3) A person that collects fees for purported membership in a discount plan but willfully fails to provide the promised benefits commits a theft and upon conviction is subject to the provisions of Title 9A RCW. In addition, upon conviction, the person shall pay restitution to persons aggrieved by the violation of this chapter.

(4) Any person damaged by acts that violate this chapter may maintain an action for the recovery of damages caused by that act or acts.

(a) An action for violation of this section may be brought:

(i) In the county where the plaintiff resides;

(ii) In the county where the plaintiff conducts business; or

(iii) In the county where the discount plan was sold, marketed, promoted, advertised, or otherwise distributed.

(b) The acceptance or use of any discount plan or discount plan card does not operate as a waiver of any civil, criminal, or administrative claim that may be asserted under this chapter. [2009 c 175 § 16.]

48.155.140 Temporary and permanent injunctive relief—When authorized. (1)(a) In addition to the penalties and other enforcement provisions of this chapter, the commissioner may seek both temporary and permanent injunctive relief when:

(i) A discount plan is being operated by a person or entity that is not licensed under this chapter; or

(ii) Any person, entity, or discount plan organization has engaged in any activity prohibited by this chapter or any rule adopted under this chapter.

(b) The venue for any court proceeding brought under this section is Thurston county.

(2) The commissioner's authority to seek injunctive relief is not conditioned on having conducted any proceeding under chapter 34.05 RCW. [2009 c 175 § 17.]

Chapter 48.160 RCW
GUARANTEED ASSET PROTECTION WAIVERS

Sections

48.160.001 Purpose—Application.
48.160.005 Guaranteed asset protection waiver account.
48.160.010 Definitions.

48.160.020 Waivers limited to motor vehicle financing—Registration, when required—Application.
48.160.030 Waivers—Requirements for offering, selling, or providing—Terms—Insuring obligations—Funds—Assignment.
48.160.040 Insuring waiver obligations—Contractual liability or other insurance policies.
48.160.050 Required disclosures.
48.160.060 Cancellations—Refunds—Free look period—Disclosure required.
48.160.070 Commissioner's authority to enforce chapter—Rules.
48.160.080 Failure to register when required—Criminal and civil penalties—Personal liability.
48.160.900 Date of application—2009 c 334.

48.160.001 Purpose—Application. (1) The purpose of this chapter is to provide a framework within which guaranteed asset protection waivers are defined and may be offered within this state.

(2) This chapter does not apply to:

(a) An insurance policy offered by an insurer under this title; or

(b) A federally regulated financial institution operating under 12 C.F.R. Part 37 of the office of the comptroller of the currency regulations or credit unions operating under 12 C.F.R. 721.3(g) of the national credit union administration regulations, or state regulated banks, credit unions, financial institutions operating pursuant to chapter 63.14 RCW, and consumer loan companies operating pursuant to chapter 31.04 RCW. However, an exempt federal or state chartered bank, credit union, or financial institution may elect to offer a guaranteed asset protection waiver that complies with this section, RCW 48.160.010, and 48.160.030 through 48.160.060.

(3) Guaranteed asset protection waivers are governed under this chapter and are exempt from all other provisions of this title, except RCW 48.02.060 and 48.02.080, chapter 48.04 RCW, and as provided in this chapter. [2009 c 334 § 1.]

48.160.005 Guaranteed asset protection waiver account. The guaranteed asset protection waiver account is created in the custody of the state treasurer. The fees and fines collected under this chapter must be deposited into the account. Expenditures from the account may be used to implement, administer, and enforce this chapter. Only the commissioner or the commissioner's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. [2009 c 334 § 10.]

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

(1) "Administrator" means a person, other than an insurer or creditor that performs administrative or operational functions pursuant to guaranteed asset protection waiver programs.

(2) "Borrower" means a debtor, retail buyer, or lessee, under a finance agreement, or a person who receives a loan or enters into a retail installment contract to purchase or lease a motor vehicle or vessel under chapter 63.14 RCW.

(3) "Creditor" means:

(a) The lender in a loan or credit transaction;

(b) The lessor in a lease transaction;

(c) Any retail seller of motor vehicles that provides credit to retail buyers of motor vehicles provided the seller complies with this chapter;

(d) The seller in commercial retail installment transactions; or

(e) The assignees of any creditor under this subsection to whom the credit obligation is payable.

(4) "Finance agreement" means a loan, lease, or retail installment sales contract for the purchase or lease of a motor vehicle.

(5) "Free look period" means the period of time from the effective date of the waiver until the date the borrower may cancel the waiver without penalty, fees, or costs to the borrower. This period of time must not be shorter than thirty days.

(6) "Guaranteed asset protection waiver" or "waiver" means a contractual agreement wherein a creditor agrees for a separate charge to cancel or waive all or part of amounts due that creditor on a borrower's finance agreement with that creditor in the event of a total physical damage loss or unrecovered theft of the motor vehicle, which agreement must be part of, or a separate addendum to, the finance agreement.

(7) "Insurer" means an insurance company licensed, registered, or otherwise authorized to do business under the insurance laws of this state.

(8) "Motor vehicle" means self-propelled or towed vehicles designed for personal or commercial use, including but not limited to automobiles, trucks, motorcycles, recreational vehicles, all-terrain vehicles, snowmobiles, campers, boats, personal watercraft, and motorcycle, boat, camper, and personal watercraft trailers.

(9) "Motor vehicle dealer" has the same meaning as "vehicle dealer" in RCW 46.70.011.

(10) "Person" includes an individual, company, association, organization, partnership, business trust, corporation, and every form of legal entity.

(11) "Retail buyer" means a person who buys or agrees to buy a motor vehicle or obtain motor vehicle services or agrees to have motor vehicle services rendered or furnished from a retail seller.

(12) "Retail seller" means a person engaged in the business of selling motor vehicles or motor vehicle services to retail buyers.

(13) "Unregistered marketers" means persons who offer for sale and sell guaranteed asset protection waivers who are not registered under this chapter and who are not otherwise exempt under this chapter. [2009 c 334 § 2.]

48.160.020 Waivers limited to motor vehicle financing—Registration, when required—Application. (1) This chapter applies only to guaranteed asset protection waivers for financing of motor vehicles as defined in this chapter. Any person or entity must register with the commissioner before marketing, offering for sale or selling a guaranteed asset protection waiver, and before acting as an obligor for a guaranteed asset protection waiver, in this state. However, a retail seller of motor vehicles that assigns more than eighty-five percent of guaranteed asset protection waiver agreements within thirty days of such agreements' effective date, or an insurer authorized to transact such insurance business in

this state, are not required to register pursuant to this section. Failure of any retail seller of motor vehicles to assign one hundred percent of guaranteed asset protection waiver agreements within forty-five days of such agreements' effective date will result in that retail seller being required to comply with the registration requirements of this chapter.

(2) No person may market, offer for sale, or sell a guaranteed asset protection waiver, or act as an obligor on a guaranteed asset protection waiver in this state without a registration as provided in this chapter, except as set forth in subsection (1) of this section.

(3) The application for registration must include the following:

(a) The applicant's name, address, and telephone number;

(b) The identities of the applicant's executive officers or other officers directly responsible for the waiver business;

(c) An application fee of two hundred fifty dollars, which shall be deposited into the guaranteed asset protection waiver account;

(d) A copy filed by the applicant with the commissioner of the waivers the applicant intends to offer in this state;

(e) A list of all unregistered marketers of guaranteed asset protection waivers on which the applicant will be the obligor;

(f) Such additional information as the commissioner may reasonably require.

(4) Once registered, the applicant shall keep the information required for registration current by reporting changes within thirty days after the end of the month in which the change occurs. [2009 c 334 § 3.]

48.160.030 Waivers—Requirements for offering, selling, or providing—Terms—Insuring obligations—Funds—Assignment. (1) Waivers may be offered, sold, or provided to borrowers in this state in compliance with this chapter.

(2) Waivers may, at the option of the creditor, be sold for a single payment or may be offered with a monthly or periodic payment option.

(3) Notwithstanding any other provision of law, any cost to the borrower for a guaranteed asset protection waiver entered into in compliance with the truth in lending act (15 U.S.C. Sec. 1601 et seq.) and its implementing regulations, as amended, must be separately stated and is not to be considered a finance charge or interest.

(4) Nothing in this chapter prohibits a person who is registered, or is otherwise exempt from registration or exempt from this chapter, from insuring its waiver obligation through the purchase of a contractual liability policy or other insurance policy issued by an insurer authorized to transact such insurance in this state.

(5) The waiver remains a part of the finance agreement upon the assignment, sale, or transfer of the finance agreement by the creditor.

(6) Neither the extension of credit, the term of credit, nor the term of the related motor vehicle sale or lease may be conditioned upon the purchase of a waiver.

(7) Any creditor that offers a waiver must report the sale of, and forward funds received on, all waivers to the designated party, if any, as prescribed in any applicable administrative services agreement, contractual liability policy, other insurance policy, or other specified program documents.

(8) Funds received or held by a creditor or administrator and belonging to an insurer, creditor, or administrator, under the terms of a written agreement, must be held by that creditor or administrator in a fiduciary capacity.

(9) If the guaranteed asset protection waiver is assigned, the name and address of the assignee must be mailed to the borrower within thirty days of the assignment. If at any time the name and address provided to the borrower by the initial creditor are no longer the valid point of contact to apply for waiver benefits, written notice will be mailed to the borrower within thirty days of the change stating the new name and address of the person or entity the borrower should contact to apply for waiver benefits. No waiver may be assigned to an entity that is not registered pursuant to this chapter, unless such entity is exempt from registration or unless the commissioner specifically authorizes such assignment.

(10) No person shall knowingly make, publish, or disseminate any false, deceptive, or misleading representation or advertising in the conduct of, or relative to, waiver business. Nor shall any person make, issue, or circulate, or cause to be made, issued, or circulated any misrepresentation of the terms or benefits of any waiver.

(11) A person or entity engaged in the guaranteed asset protection waiver business in this state may not refuse to sell or issue any guaranteed asset protection waiver because of the sex, marital status, or sexual orientation as defined in RCW 49.60.040, or the presence of any sensory, mental, or physical disability of the borrower or prospective borrower. The type of benefits, or any term, rate, condition, or type of coverage may not be restricted, modified, excluded, increased, or reduced on the basis of the presence of any sensory, mental, or physical disability of the borrower or prospective borrower. [2009 c 334 § 4.]

48.160.040 Insuring waiver obligations—Contractual liability or other insurance policies. (1) Contractual liability or other insurance policies insuring waivers must state the obligation of the insurer to reimburse or pay to the creditor any sums the creditor is legally obligated to waive under the waivers issued by the creditor and purchased or held by the borrower. Contractual liability insurance or other insurance policies insuring waivers must not be purchased by the creditor as part of, or a rider to, vendor single-interest or collateral protection coverages as defined in RCW 48.22.110(4).

(2) Coverage under a contractual liability or other insurance policy insuring a waiver must also cover any subsequent assignee upon the assignment, sale, or transfer of the finance agreement.

(3) Coverage under a contractual liability or other insurance policy insuring a waiver must remain in effect unless canceled or terminated in compliance with applicable insurance laws of this state.

(4) The cancellation or termination of a contractual liability or other insurance policy must not reduce the insurer's responsibility for waivers issued by the creditor prior to the date of cancellation or termination and for which a premium has been received by the insurer. [2009 c 334 § 5.]

48.160.050 Required disclosures. Guaranteed asset protection waivers must disclose, as applicable, in writing and in clear, understandable language that is easy to read, the following:

(1) The name and address of the initial creditor and the borrower at the time of sale, and the identity of any administrator if different from the creditor;

(2) The purchase price and the terms of the waiver, including without limitation, the requirements for protection, conditions, or exclusions associated with the waiver;

(3) That the borrower may cancel the waiver within a free look period as specified in the waiver, and will be entitled to a full refund of the purchase price, so long as no benefits have been provided; or in the event benefits have been provided, the borrower may receive a full or partial refund pursuant to the terms of the waiver;

(4) The procedure the borrower must follow, if any, to obtain waiver benefits under the terms and conditions of the waiver, including a telephone number and address where the borrower may apply for waiver benefits;

(5) Whether or not the waiver is cancellable after the free look period and the conditions under which it may be canceled or terminated including the procedures for requesting any refund due;

(6) That in order to receive any refund due in the event of a borrower's cancellation of the waiver agreement or early termination of the finance agreement after the free look period of the waiver, the borrower, in accordance with terms of the waiver, must provide a written request to cancel to the creditor, administrator, or such other party, within ninety days of the occurrence of the event terminating the finance agreement;

(7) The methodology for calculating any refund of the unearned purchase price of the waiver due, in the event of cancellation of the waiver or early termination of the finance agreement;

(8) That any refund of the purchase price for a waiver that was included in the financing of the motor vehicle or vessel may be applied by the creditor as a reduction of the overall amount owed under the finance agreement, rather than applying the refund strictly to the purchase price of the waiver. This disclosure must be conspicuously presented prior to the purchase of the waiver;

(9) That neither the extension of credit, the terms of the credit, nor the terms of the related motor vehicle sale or lease, may be conditioned upon the purchase of the waiver;

(10) That the guaranteed asset protection waiver is not credit insurance, nor does it eliminate the borrower's obligation to insure the motor vehicle as provided by laws of this state. Purchasing a guaranteed asset protection waiver does not eliminate the borrower's rights and obligations under the vendor single-interest and collateral protection coverage laws of this state. [2009 c 334 § 6.]

48.160.060 Cancellations—Refunds—Free look period—Disclosure required. (1) Guaranteed asset protection waiver agreements may be cancellable or noncancellable after the free look period. Waivers must provide that if a borrower cancels a waiver within the free look period, the borrower will be entitled to a full refund of the purchase price, so long as no benefits have been provided; or in the event benefits have been provided, the borrower may receive a full or partial refund pursuant to the terms of the waiver.

(2) In the event of a borrower's cancellation of the waiver or early termination of the finance agreement, after the agreement has been in effect beyond the free look period, the borrower may be entitled to a refund of any unearned portion of the purchase price of the waiver unless the waiver provides otherwise. In order to receive a refund, the borrower, in accordance with any applicable terms of the waiver, must provide a written request to the creditor, administrator, or other party, within ninety days of the event terminating the finance agreement.

(3) If the cancellation of a waiver occurs as a result of a default under the finance agreement or the repossession of the motor vehicle associated with the finance agreement, any refund due may be paid directly to the creditor or administrator and applied as set forth in subsection (4) of this section.

(4) Any cancellation refund under this section may be applied by the creditor as a reduction of the overall amount owed under the finance agreement, if the cost of the guaranteed asset protection waiver was included in the financing of the motor vehicle or vessel.

(5) Disclosure of how the refund may be applied by the creditor or administrator must be made in accordance with the provisions of RCW 48.160.050(8). [2009 c 334 § 7.]

48.160.070 Commissioner's authority to enforce chapter—Rules. (1) The commissioner may, subject to chapter 48.04 RCW, take action that is necessary or appropriate to enforce this chapter and to protect guaranteed asset protection waiver holders in this state, which includes:

(a) Suspending, revoking, or refusing to issue the registration of a person or entity if the registrant fails to comply with any provision of this chapter or fails to comply with any proper order or rule of the commissioner; and

(b) After hearing or with the consent of the registrant, and in addition to or in lieu of the suspension, revocation, or refusal to issue any registration, imposing a penalty of not more than two thousand dollars for each violation of this chapter.

(2) The commissioner may adopt rules to implement this chapter. [2009 c 334 § 8.]

48.160.080 Failure to register when required—Criminal and civil penalties—Personal liability. (1) Any person who markets, offers for sale or sells a guaranteed asset protection waiver, or acts as an obligor for a guaranteed asset protection waiver without a registration, unless otherwise exempt from registration or exempt from this chapter, is acting in violation of this section and is subject to the provisions of RCW 48.160.070. In addition, any person who knowingly violates this section is guilty of a class B felony punishable under chapter 9A.20 RCW.

(2) Any criminal penalty imposed under this section is in addition to, and not in lieu of, any other civil or administrative penalty or sanction otherwise authorized under state law.

(3) If the commissioner has cause to believe that any person has violated this section, the commissioner may assess a civil penalty of not more than twenty-five thousand dollars for each violation, after providing notice and an opportunity

for a hearing in accordance with chapter 48.04 RCW. Upon failure to pay this civil penalty when due, the attorney general may bring a civil action on behalf of the commissioner to recover the unpaid penalty.

(4) A person or entity that should have been registered at the time of the sale of a waiver who was not so registered pursuant to this chapter is personally liable for performance of the waiver. Any waiver sold by a person or entity that should have been registered at the time of the sale is voidable, except at the instance of the person or entity who sold the waiver. [2009 c 334 § 9.]

48.160.900 Date of application—2009 c 334. Chapter 334, Laws of 2009 is applicable to all guaranteed asset protection waiver agreements entered into on or after January 1, 2010. [2009 c 334 § 13.]

Chapter 48.165 RCW

UNIFORM ADMINISTRATIVE PROCEDURES—HEALTH CARE SERVICES

Sections

48.165.005 Findings—Intent.
48.165.010 Definitions.
48.165.030 Designation of lead organizations—Coordination responsibility—Qualifications—Lead organization's duties—Commissioner's duties.
48.165.035 Lead organization tasks—Uniform electronic process.
48.165.040 Lead organization tasks—Uniform standard companion document and data set.
48.165.045 Lead organization tasks—Implementation guidelines—Code development and standardization—Denial review process.
48.165.050 Lead organization tasks—Develop and promote uniform practices—Medical management protocols.

48.165.005 Findings—Intent. The legislature finds that:

(1) The health care system in the nation and in Washington state costs nearly twice as much per capita as other industrialized nations.

(2) The fragmentation and variation in administrative processes prevalent in our health care system contribute to the high cost of health care, putting it increasingly beyond the reach of small businesses and individuals in Washington.

(3) In 2006, the legislature's blue ribbon commission on health care costs and access requested the office of the insurance commissioner to conduct a study of administrative costs and recommendations to reduce those costs. Findings in the report included:

(a) In Washington state approximately thirty cents of every dollar received by hospitals and doctors' offices is consumed by the administrative expenses of public and private payors and the providers;

(b) Before the doctors and hospitals receive the funds for delivering the care, approximately fourteen percent of the insurance premium has already been consumed by payor administration. The payor's portion of expense totals approximately four hundred fifty dollars per insurance member per year in Washington state;

(c) Over thirteen percent of every dollar received by a physician's office is devoted to interactions between the provider and payor;

(d) Between 1997 and 2005, billing and insurance related costs for hospitals in Washington grew at an average pace of nineteen percent per year; and

(e) The greatest opportunity for improved efficiency and administrative cost reduction in our health care system would involve standardizing and streamlining activities between providers and payors.

(4) To address these inefficiencies, constrain health care inflation, and make health care more affordable for Washingtonians, the legislature seeks to establish streamlined and uniform procedures for payors and providers of health care services in the state. It is the intent of the legislature to foster a continuous quality improvement cycle to simplify health care administration. This process should involve leadership in the health care industry and health care purchasers, with regulatory oversight from the office of the insurance commissioner. [2009 c 298 § 1.]

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

(1) "Commissioner" means the insurance commissioner as established under chapter 48.02 RCW.

(2) "Health care provider" or "provider" has the same meaning as in RCW 48.43.005 and, for the purposes of chapter 298, Laws of 2009, shall include facilities licensed under chapter 70.41 RCW.

(3) "Lead organization" means a private sector organization or organizations designated by the commissioner to lead development of processes, guidelines, and standards to streamline health care administration and to be adopted by payors and providers of health care services operating in the state.

(4) "Medical management" means administrative activities established by the payor to manage the utilization of services through preservice or postservice reviews. "Medical management" includes, but is not limited to:

(a) Prior authorization or preauthorization of services;

(b) Precertification of services;

(c) Postservice review;

(d) Medical necessity review; and

(e) Benefits advisory.

(5) "Payor" means public purchasers, as defined in this section, carriers licensed under chapters 48.20, 48.21, 48.44, 48.46, and 48.62 RCW, and the Washington state health insurance pool established in chapter 48.41 RCW.

(6) "Public purchaser" means the department of social and health services, the department of labor and industries, and the health care authority.

(7) "Secretary" means the secretary of the department of health.

(8) "Third-party payor" has the same meaning as in RCW 70.02.010. [2009 c 298 § 2.]

48.165.030 Designation of lead organizations—Coordination responsibility—Qualifications—Lead organization's duties—Commissioner's duties. (1) The commissioner shall designate one or more lead organizations to coordinate development of processes, guidelines, and standards to streamline health care administration and to be adopted by

payors and providers of health care services operating in the state. The lead organization designated by the commissioner for chapter 298, Laws of 2009 shall:

(a) Be representative of providers and payors across the state;

(b) Have expertise and knowledge in the major disciplines related to health care administration; and

(c) Be able to support the costs of its work without recourse to public funding.

(2) The lead organization shall:

(a) In collaboration with the commissioner, identify and convene work groups, as needed, to define the processes, guidelines, and standards required in RCW 48.165.035, 18.122.165, and 48.165.040 through 48.165.050;

(b) In collaboration with the commissioner, promote the participation of representatives of health care providers, payors of health care services, and others whose expertise would contribute to streamlining health care administration;

(c) Conduct outreach and communication efforts to maximize adoption of the guidelines, standards, and processes developed by the lead organization;

(d) Submit regular updates to the commissioner on the progress implementing the requirements of chapter 298, Laws of 2009; and

(e) With the commissioner, report to the legislature annually through December 1, 2012, on progress made, the time necessary for completing tasks, and identification of future tasks that should be prioritized for the next improvement cycle.

(3) The commissioner shall:

(a) Participate in and review the work and progress of the lead organization, including the establishment and operation of work groups for chapter 298, Laws of 2009;

(b) Adopt into rule, or submit as proposed legislation, the guidelines, standards, and processes set forth in chapter 298, Laws of 2009 if:

(i) The lead organization fails to timely develop or implement the guidelines, standards, and processes set forth in RCW 48.165.035, 18.122.165, and 48.165.040 through 48.165.050; or

(ii) It is unlikely that there will be widespread adoption of the guidelines, standards, and processes developed under chapter 298, Laws of 2009;

(c) Consult with the office of the attorney general to determine whether an antitrust safe harbor is necessary to enable licensed carriers and providers to develop common rules and standards; and, if necessary, take steps, such as implementing rules or requesting legislation, to establish such safe harbor; and

(d) Convene an executive level work group with broad payor and provider representation to advise the commissioner regarding the goals and progress of implementation of the requirements of chapter 298, Laws of 2009. [2009 c 298 § 5.]

48.165.035 Lead organization tasks—Uniform electronic process. By December 31, 2010, the lead organization shall:

(1) Develop a uniform electronic process for collecting and transmitting the necessary provider-supplied data to support credentialing, admitting privileges, and other related processes that:

(a) Reduces the administrative burden on providers;

(b) Improves the quality and timeliness of information for hospitals and payors;

(c) Is interoperable with other relevant systems;

(d) Enables use of the data by authorized participants for other related applications; and

(e) Serves as the sole source of credentialing information required by hospitals and payors from providers for data elements included in the electronic process, except this shall not prohibit:

(i) A hospital, payor, or other credentialing entity subject to the requirements of this section from seeking clarification of information obtained through use of the uniform electronic process, if such clarification is reasonably necessary to complete the credentialing process; or

(ii) A hospital, payor, other credentialing entity, or a university from using information not provided by the uniform process for the purpose of credentialing, admitting privileges, or faculty appointment of providers, including peer review and coordinated quality improvement information, that is obtained from sources other than the provider;

(2) Promote widespread adoption of such process by payors and hospitals, their delegates, and subcontractors in the state that credential health professionals and by such health professionals as soon as possible thereafter; and

(3) Work with the secretary to assure that data used in the uniform electronic process can be electronically exchanged with the department of health professional licensing process under chapter 18.122 RCW. [2009 c 298 § 6.]

48.165.040 Lead organization tasks—Uniform standard companion document and data set. The lead organization shall:

(1) Establish a uniform standard companion document and data set for electronic eligibility and coverage verification. Such a companion guide will:

(a) Be based on nationally accepted ANSI X12 270/271 standards for eligibility inquiry and response and, wherever possible, be consistent with the standards adopted by nationally recognized organizations, such as the centers for medicare and medicaid services;

(b) Enable providers and payors to exchange eligibility requests and responses on a system-to-system basis or using a payor supported web browser;

(c) Provide reasonably detailed information on a consumer's eligibility for health care coverage, scope of benefits, limitations and exclusions provided under that coverage, cost-sharing requirements for specific services at the specific time of the inquiry, current deductible amounts, accumulated or limited benefits, out-of-pocket maximums, any maximum policy amounts, and other information required for the provider to collect the patient's portion of the bill; and

(d) Reflect the necessary limitations imposed on payors by the originator of the eligibility and benefits information;

(2) Recommend a standard or common process to the commissioner to protect providers and hospitals from the costs of, and payors from claims for, services to patients who are ineligible for insurance coverage in circumstances where a payor provides eligibility verification based on best information available to the payor at the date of the request; and

(3) Complete, disseminate, and promote widespread adoption by payors of such document and data set by December 31, 2010. [2009 c 298 § 8.]

48.165.045 Lead organization tasks—Implementation guidelines—Code development and standardization—Denial review process. (1) By December 31, 2010, the lead organization shall develop implementation guidelines and promote widespread adoption of such guidelines for:

(a) The use of the national correct coding initiative code edit policy by payors and providers in the state;

(b) Publishing any variations from component codes, mutually exclusive codes, and status b codes by payors in a manner that makes for simple retrieval and implementation by providers;

(c) Use of health insurance portability and accountability act standard group codes, reason codes, and remark codes by payors in electronic remittances sent to providers;

(d) The processing of corrections to claims by providers and payors; and

(e) A standard payor denial review process for providers when they request a reconsideration of a denial of a claim that results from differences in clinical edits where no single, common standards body or process exists and multiple conflicting sources are in use by payors and providers.

(2) By October 31, 2010, the lead organization shall develop a proposed set of goals and work plan for additional code standardization efforts for 2011 and 2012.

(3) Nothing in this section or in the guidelines developed by the lead organization shall inhibit an individual payor's ability to employ, and not disclose to providers, temporary code edits for the purpose of detecting and deterring fraudulent billing activities. Though such temporary code edits are not required to be disclosed to providers, the guidelines shall require that:

(a) Each payor disclose to the provider its adjudication decision on a claim that was denied or adjusted based on the application of such an edit; and

(b) The provider have access to the payor's review and appeal process to challenge the payor's adjudication decision, provided that nothing in this subsection (3)(b) shall be construed to modify the rights or obligations of payors or providers with respect to procedures relating to the investigation, reporting, appeal, or prosecution under applicable law of potentially fraudulent billing activities. [2009 c 298 § 9.]

48.165.050 Lead organization tasks—Develop and promote uniform practices—Medical management protocols. (1) By December 31, 2010, the lead organization shall:

(a) Develop and promote widespread adoption by payors and providers of guidelines to:

(i) Ensure payors do not automatically deny claims for services when extenuating circumstances make it impossible for the provider to: (A) Obtain a preauthorization before services are performed; or (B) notify a payor within twenty-four hours of a patient's admission; and

(ii) Require payors to use common and consistent time frames when responding to provider requests for medical management approvals. Whenever possible, such time frames shall be consistent with those established by leading national organizations and be based upon the acuity of the patient's need for care or treatment;

(b) Develop, maintain, and promote widespread adoption of a single common web site where providers can obtain payors' preauthorization, benefits advisory, and preadmission requirements;

(c) Establish guidelines for payors to develop and maintain a web site that providers can employ to:

(i) Request a preauthorization, including a prospective clinical necessity review;

(ii) Receive an authorization number; and

(iii) Transmit an admission notification.

(2) By October 31, 2010, the lead organization shall propose to the commissioner a set of goals and work plan for the development of medical management protocols, including whether to develop evidence-based medical management practices addressing specific clinical conditions and make its recommendation to the commissioner, who shall report the lead organization's findings and recommendations to the legislature. [2009 c 298 § 10.]

Chapter 48.170 RCW
SELF-SERVICE STORAGE INSURANCE PRODUCERS

Sections

48.170.005 Definitions. *(Effective July 1, 2010.)*
48.170.007 Rules. *(Effective July 1, 2010.)*
48.170.010 License required. *(Effective July 1, 2010.)*
48.170.020 Application for a license—Requirements. *(Effective July 1, 2010.)*
48.170.030 Licensee exempt from continuing education requirements. *(Effective July 1, 2010.)*
48.170.040 Authority conveyed by license. *(Effective July 1, 2010.)*
48.170.050 Preconditions to soliciting insurance. *(Effective July 1, 2010.)*
48.170.060 Required written disclosure material—Contents. *(Effective July 1, 2010.)*
48.170.070 Employee acting under authority of license—Conditions—Limitations. *(Effective July 1, 2010.)*
48.170.900 Effective date—2009 c 119.

48.170.005 Definitions. ***(Effective July 1, 2010.)*** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Commissioner" means the insurance commissioner of this state.

(2) "Occupant" means a person, or his or her sublessee, successor, or assign, who is entitled to the use of the storage space at a self-service storage facility under a rental agreement, to the exclusion of others.

(3) "Owner" means the owner, operator, property management company, lessor, or sublessor of a self-service storage facility. "Owner" does not mean an occupant.

(4) "Personal property" means movable property not affixed to land, and includes, but is not limited to, goods, merchandise, furniture, and household items.

(5) "Self-service storage facility" or "facility" means any real property designed and used for the purpose of renting or leasing individual storage space to occupants who are to have access to the space for the purpose of storing and removing personal property on a self-service basis, but does not include a garage or other storage area in a private residence.

(6) "Self-service storage insurance" is insurance that in connection with and incidental to the rental of space at a facility provides coverage to occupants at the facility for the loss of or damage to stored personal property that occurs at that facility.

(7) "Self-service storage insurance producer" means any owner of a facility that is licensed as a specialty lines insurance producer under chapter 48.17 RCW to offer, sell, or solicit self-service storage insurance under this chapter. [2009 c 119 § 1.]

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

48.170.007 Rules. ***(Effective July 1, 2010.)*** The commissioner may adopt rules necessary to implement and administer this chapter. [2009 c 119 § 9.]

48.170.010 License required. ***(Effective July 1, 2010.)*** (1) An owner; or officer, director, or employee of an owner; may not offer, sell, or solicit the purchase of self-service storage insurance unless that person is:

(a) Licensed as an insurance producer with a property line of authority under chapter 48.17 RCW; or

(b) Licensed as a self-service storage insurance producer under chapter 48.17 RCW and is in compliance with this chapter.

(2) If the owner is licensed as a self-service storage insurance producer under chapter 48.17 RCW and is in compliance with this chapter, then an employee of the owner who is in compliance with RCW 48.170.070(1) is not required to be individually licensed.

(3) The commissioner may issue a specialty line insurance producer license to an owner that is in compliance with this chapter authorizing the owner to act as a self-service storage insurance producer under this chapter, in connection with and incidental to rental agreements, on behalf of any insurer authorized to write self-service storage insurance in this state. [2009 c 119 § 2.]

48.170.020 Application for a license—Requirements. ***(Effective July 1, 2010.)*** An owner may apply to be licensed as a self-service storage insurance producer under, and if in compliance with, this chapter by filing the following documents with the commissioner:

(1) A written application for licensure, signed by the applicant or by an officer of the applicant, in the form prescribed by the commissioner that includes a listing of all locations at which the owner intends to offer, sell, or solicit self-service storage insurance; and

(2)(a) A certificate by the insurer that is to be named in self-service storage insurance producer license, stating that the insurer:

(i) Has satisfied itself that the named applicant is trustworthy and competent to act as its self-service storage insurance producer, limited to this purpose;

(ii) Has reviewed the employee training and education program required by RCW 48.170.070(1)(c) and that it satisfies the statutory requirements; and

(iii) Will appoint the applicant to act as its self-service storage insurance producer to offer, sell, or solicit self-service storage insurance, if the license for which the applicant is applying is issued by the commissioner.

(b) The certification shall be subscribed by an authorized representative of the insurer on a form prescribed by the commissioner. [2009 c 119 § 3.]

48.170.030 Licensee exempt from continuing education requirements. ***(Effective July 1, 2010.)*** An owner issued a self-service storage insurance producer license under this chapter is not subject to the prelicensure or continuing education requirements in chapter 48.17 RCW. [2009 c 119 § 4.]

48.170.040 Authority conveyed by license. ***(Effective July 1, 2010.)*** (1) A self-service storage insurance producer license authorizes a self-service storage insurance producer and its employees to offer and sell to, enroll in, and bill and collect premiums from occupants for insurance covering the loss of or damage to personal property stored at a facility on a master, corporate, group, or individual policy basis.

(2) A self-service storage insurance producer is not required to treat moneys collected from occupants purchasing insurance under this chapter as funds received in a fiduciary capacity, if:

(a) The insurer represented by the self-service storage insurance producer has consented in writing, signed by an officer of the insurer, that the premiums need not be segregated from funds received by the self-service storage insurance producer; and

(b) The charges for insurance coverage are itemized and ancillary to the rental agreement.

(3) An owner is not required to be licensed pursuant to this section merely to display and make available to prospective occupants brochures and other promotional materials created by or on behalf of an authorized insurer, provided that either the owner or its employees, or both, are not paid a commission or other consideration. [2009 c 119 § 5.]

48.170.050 Preconditions to soliciting insurance. ***(Effective July 1, 2010.)*** A self-service storage insurance producer may not solicit insurance under RCW 48.170.010 unless:

(1) At every location where occupants are enrolled in self-service storage insurance programs, written disclosure material regarding the program is made available to prospective occupants; and

(2) All employees who offer and sell to, enroll in, and bill and collect premiums from occupants for insurance have completed a training program for employees of the licensed self-service storage insurance producer as approved by the commissioner. [2009 c 119 § 6.]

48.170.060 Required written disclosure material—Contents. ***(Effective July 1, 2010.)*** The written disclosure material required in RCW 48.170.050(1) must:

(1) Summarize the material terms of insurance coverage offered to occupants, including the name, address, telephone number of the insurer, price, benefits, exclusions, and conditions;

(2) Prominently and conspicuously disclose that the policies offered by the self-service storage insurance producer may provide a duplication of coverage already provided by an occupant's homeowner's insurance policy, renter's insurance policy, vehicle insurance policy, watercraft insurance policy, or other source of property insurance coverage;

(3) State that if self-service storage insurance is required as a condition of rental, the requirement may be satisfied by the occupant purchasing the insurance being offered to the occupant by the owner or by presenting evidence of other applicable insurance coverage;

(4) Describe the process for filing a claim;

(5) State in writing all costs related to the insurance; and

(6) Disclose any other information required by rule by the commissioner. [2009 c 119 § 7.]

48.170.070 Employee acting under authority of license—Conditions—Limitations. ***(Effective July 1, 2010.)*** (1) An employee of a self-service storage insurance producer may be authorized to offer, sell, or solicit self-service storage insurance under the authority of the self-service storage insurance producer's license, if all of the following conditions have been satisfied:

(a) The employee is eighteen years of age or older;

(b) The employee is a trustworthy person and has not committed any act set forth in RCW 48.17.530;

(c) The employee has completed a training and education program;

(d) The self-service storage insurance producer, at the time it submits its self-service storage insurance producer license application, also submits a list of the names of all employees to its self-service storage insurance producer license on forms prescribed by the commissioner. The list shall be submitted to the commissioner annually and kept current by reporting all changes, deletions, or additions within thirty days after the change, deletion, or addition occurred. Each list shall be retained by the self-service storage insurance producer for a period of three years from submission; and

(e) The self-service storage insurance producer submits to the commissioner with its initial self-service storage insurance producer license application, and annually thereafter, a certification subscribed by an officer of the self-service storage insurance producer on a form prescribed by the commissioner, stating all of the following:

(i) No person other than an employee offers, sells, or solicits self-service storage insurance on its behalf or while working as an employee of the self-service storage insurance producer; and

(ii) All employees have completed the training and education program under subsection (4) of this section.

(2) A self-service storage insurance producer's employee may only act on behalf of the self-service storage insurance producer in the offer, sale, or solicitation of self-service storage insurance. A self-service storage insurance producer is responsible for, and must supervise, all actions of its employees related to the offering, sale, or solicitation of self-service storage insurance. The conduct of an employee is the same as the conduct of the self-service storage insurance producer for purposes of this chapter.

(3) The manager at each location of a self-service storage insurance producer, or the direct supervisor of the self-service storage insurance producer's employees at each location, must be an employee of that self-service storage insurance producer and is responsible for the supervision of each additional employee at that location. Each self-service storage insurance producer shall identify the employee who is the manager or direct supervisor at each location in the employee list that it submits under subsection (1)(d) of this section.

(4) Each self-service storage insurance producer shall provide a training and education program for each employee prior to allowing an employee to offer, sell, or solicit self-service storage insurance. Details of the program must be submitted to the commissioner, along with the license application, for approval prior to use, and resubmitted for approval of any changes prior to use. This training program shall meet the following minimum standards:

(a) Each employee shall receive instruction about the insurance authorized under this chapter that may be offered for sale to prospective occupants; and

(b) Each employee shall receive training about the requirements and limitations imposed on self-service storage insurance producer and employees under this chapter. The training must include specific instruction that the employee is prohibited by law from making any statement or engaging in any conduct express or implied, that would lead a consumer to believe that the:

(i) Occupant does not have insurance policies in place that already provide the coverage being offered by the self-service storage producer under this chapter; or

(ii) Employee is qualified to evaluate the adequacy of the occupant's existing insurance coverages.

(5) The training and education program submitted to the commissioner is approved if no action is taken within thirty days of its submission.

(6) An employee's authorization to offer, sell, or solicit self-service storage insurance expires when the employee's employment with the self-service storage insurance producer is terminated.

(7) The self-service storage insurance producer shall retain for a period of one year from the date of each transaction records which enable it to identify the name of the employee involved in each rental transaction when an occupant purchases self-service storage insurance. [2009 c 119 § 8.]

48.170.900 Effective date—2009 c 119. This act takes effect July 1, 2010. [2009 c 119 § 13.]

Title 49

LABOR REGULATIONS

Chapters

49.04 Apprenticeship.
49.12 Industrial welfare.
49.24 Health and safety—Underground workers.
49.48 Wages—Payment—Collection.
49.60 Discrimination—Human rights commission.
49.74 Affirmative action.
49.77 Military family leave act.

49.78 Family leave.
49.86 Family leave insurance.
49.90 Sensory disabilities.

Chapter 49.04 RCW
APPRENTICESHIP

Sections

49.04.200 Apprenticeship programs for energy audits and energy efficiency services—Prioritization of workforce training programs—Outreach efforts.

49.04.200 Apprenticeship programs for energy audits and energy efficiency services—Prioritization of workforce training programs—Outreach efforts. (1) The council must evaluate the potential of existing apprenticeship and training programs that would produce workers with the skills needed to conduct energy audits and provide energy efficiency services and deliver its findings to the department of community, trade, and economic development, the *leadership team, and the appropriate committees of the legislature as soon as possible, but no later than January 18, 2010.

(2) The council may prioritize workforce training programs that lead to apprenticeship programs in green economy jobs. For purposes of this section, green economy jobs include those in the primary industries of a green economy, including clean energy, the forestry industry, high-efficiency building, green transportation, and environmental protection. Prioritization efforts may include but are not limited to: (a) Prioritization of the use of high employer-demand funding for workforce training programs in green economy jobs; (b) increased outreach efforts to public utilities, education, labor, government, and private industry to develop tailored, green job training programs; and (c) increased outreach efforts to target populations. Outreach efforts shall be conducted in partnership with local workforce development councils.

(3) The definitions in RCW 43.330.010 apply to this section. [2009 c 536 § 12.]

***Reviser's note:** The leadership team was created in 2009 c 536 § 3, which was vetoed.

Short title—2009 c 536: See note following RCW 43.330.370.

Chapter 49.12 RCW
INDUSTRIAL WELFARE

Sections

49.12.903 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. *(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*

49.12.903 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. ***(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 130.]

Chapter 49.24 RCW
HEALTH AND SAFETY—UNDERGROUND WORKERS

Sections

49.24.140 Locks.
49.24.150 Explosives and detonators.
49.24.220 Explosives, use of—Blasting.

49.24.140 Locks. (1) Each bulkhead in tunnels of twelve feet or more in diameter or equivalent area, shall have at least two locks in perfect working condition, one of which shall be used as an air lock. An additional lock for use in case of emergency shall be held in reserve.

(2) The air lock shall be large enough so that those using it are not compelled to be in a cramped position, and shall not be less than five feet in height. Emergency locks shall be large enough to hold an entire heading shift.

(3) All locks used for decompression shall be lighted by electricity and shall contain a pressure gauge, a time piece, a glass "bull's eye" in each door or in each end, and shall also have facilities for heating.

(4) Valves shall be so arranged that the locks can be operated both from within and from without. [2009 c 549 § 1013; 1941 c 194 § 7; Rem. Supp. 1941 § 7666-15.]

49.24.150 Explosives and detonators. When locking explosives and detonators into the air chamber, they shall be kept at opposite ends of the lock. While explosives and detonators are being taken through, no persons other than the lock tender and the carriers shall be permitted in the lock. [2009 c 549 § 1014; 1941 c 194 § 8; Rem. Supp. 1941 § 7666-16.]

49.24.220 Explosives, use of—Blasting. (1) No greater quantity of explosives than that which is required for immediate use shall be taken into the working chamber.

(2) Explosives shall be conveyed in a suitable covered wooden box.

(3) Detonators shall be conveyed in a separate covered wooden box.

(4) Explosives and detonators shall be taken separately into the caissons.

(5) After blasting is completed, all explosives and detonators shall be returned at once to the magazine.

(6) No naked light shall be used in the vicinity of open chests or magazines containing explosives, nor near where a charge is being primed.

(7) No tools or other articles shall be carried with the explosives or with the detonators.

(8) All power lines and electric light wires shall be disconnected at a point outside the blasting switch before the loading of holes. No current by grounding of power or

bonded rails shall be allowed beyond blasting switch after explosives are taken in preparatory to blasting, and under no circumstances shall grounded current be used for exploding blasts.

(9) Before drilling is commenced on any shift, all remaining holes shall be examined with a wooden stick for unexploded charges or cartridges, and if any are found, same shall be refired before work proceeds.

(10) No person shall be allowed to deepen holes that have previously contained explosives.

(11) All wires in broken rock shall be carefully traced and search made for unexploded cartridges.

(12) Whenever blasting is being done in a tunnel, at points liable to break through to where other persons are at work, the person in charge shall, before any holes are loaded, give warning of danger to all persons that may be working where the blasts may break through, and he or she shall not allow any holes to be charged until warning is acknowledged and persons are removed.

(13) Blasters when testing circuit through charged holes shall use sufficient leading wires to be at a safe distance and shall use only approved types of galvanometers. No tests of circuits in charged holes shall be made until persons are removed to safe distance.

(14) No blasts shall be fired with fuse, except electrically ignited fuse, in vertical or steep shafts.

(15) In shaft sinking where the electric current is used for firing, a separate switch not controlling any electric lights must be used for blasting and proper safeguard similar to those in tunnels must be followed in order to insure against premature firing. [2009 c 549 § 1015; 1941 c 194 § 15; Rem. Supp. 1941 § 7666-23.]

Explosives: Chapter 70.74 RCW.

Chapter 49.48 RCW
WAGES—PAYMENT—COLLECTION

Sections

49.48.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. *(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*

49.48.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. ***(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 131.]

Chapter 49.60 RCW
DISCRIMINATION—HUMAN RIGHTS COMMISSION

Sections

49.60.030 Freedom from discrimination—Declaration of civil rights.
49.60.040 Definitions.
49.60.215 Unfair practices of places of public resort, accommodation, assemblage, amusement.
49.60.500 Community athletics programs—Sex discrimination prohibited—Definitions.
49.60.505 Community athletics programs—Nondiscrimination policy required.

49.60.030 Freedom from discrimination—Declaration of civil rights. (1) The right to be free from discrimination because of race, creed, color, national origin, sex, honorably discharged veteran or military status, sexual orientation, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability is recognized as and declared to be a civil right. This right shall include, but not be limited to:

(a) The right to obtain and hold employment without discrimination;

(b) The right to the full enjoyment of any of the accommodations, advantages, facilities, or privileges of any place of public resort, accommodation, assemblage, or amusement;

(c) The right to engage in real estate transactions without discrimination, including discrimination against families with children;

(d) The right to engage in credit transactions without discrimination;

(e) The right to engage in insurance transactions or transactions with health maintenance organizations without discrimination: PROVIDED, That a practice which is not unlawful under RCW 48.30.300, 48.44.220, or 48.46.370 does not constitute an unfair practice for the purposes of this subparagraph;

(f) The right to engage in commerce free from any discriminatory boycotts or blacklists. Discriminatory boycotts or blacklists for purposes of this section shall be defined as the formation or execution of any express or implied agreement, understanding, policy or contractual arrangement for economic benefit between any persons which is not specifically authorized by the laws of the United States and which is required or imposed, either directly or indirectly, overtly or covertly, by a foreign government or foreign person in order to restrict, condition, prohibit, or interfere with or in order to exclude any person or persons from any business relationship on the basis of race, color, creed, religion, sex, honorably discharged veteran or military status, sexual orientation, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by a person with a disability, or national origin or lawful business relationship: PROVIDED HOWEVER, That nothing herein contained shall prohibit the use of boycotts as authorized by law pertaining to labor disputes and unfair labor practices; and

(g) The right of a mother to breastfeed her child in any place of public resort, accommodation, assemblage, or amusement.

(2) Any person deeming himself or herself injured by any act in violation of this chapter shall have a civil action in a court of competent jurisdiction to enjoin further violations,

or to recover the actual damages sustained by the person, or both, together with the cost of suit including reasonable attorneys' fees or any other appropriate remedy authorized by this chapter or the United States Civil Rights Act of 1964 as amended, or the Federal Fair Housing Amendments Act of 1988 (42 U.S.C. Sec. 3601 et seq.).

(3) Except for any unfair practice committed by an employer against an employee or a prospective employee, or any unfair practice in a real estate transaction which is the basis for relief specified in the amendments to RCW 49.60.225 contained in chapter 69, Laws of 1993, any unfair practice prohibited by this chapter which is committed in the course of trade or commerce as defined in the Consumer Protection Act, chapter 19.86 RCW, is, for the purpose of applying that chapter, a matter affecting the public interest, is not reasonable in relation to the development and preservation of business, and is an unfair or deceptive act in trade or commerce. [2009 c 164 § 1; 2007 c 187 § 3; 2006 c 4 § 3; 1997 c 271 § 2; 1995 c 135 § 3. Prior: 1993 c 510 § 3; 1993 c 69 § 1; 1984 c 32 § 2; 1979 c 127 § 2; 1977 ex.s. c 192 § 1; 1974 ex.s. c 32 § 1; 1973 1st ex.s. c 214 § 3; 1973 c 141 § 3; 1969 ex.s. c 167 § 2; 1957 c 37 § 3; 1949 c 183 § 2; Rem. Supp. 1949 § 7614-21.]

Intent—1995 c 135: See note following RCW 29A.08.760.

Severability—1993 c 510: See note following RCW 49.60.010.

Severability—1993 c 69: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1993 c 69 § 17.]

Severability—1969 ex.s. c 167: See note following RCW 49.60.010.

Severability—1957 c 37: See note following RCW 49.60.010.

Severability—1949 c 183: See note following RCW 49.60.010.

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

(1) "Aggrieved person" means any person who: (a) Claims to have been injured by an unfair practice in a real estate transaction; or (b) believes that he or she will be injured by an unfair practice in a real estate transaction that is about to occur.

(2) "Any place of public resort, accommodation, assemblage, or amusement" includes, but is not limited to, any place, licensed or unlicensed, kept for gain, hire, or reward, or where charges are made for admission, service, occupancy, or use of any property or facilities, whether conducted for the entertainment, housing, or lodging of transient guests, or for the benefit, use, or accommodation of those seeking health, recreation, or rest, or for the burial or other disposition of human remains, or for the sale of goods, merchandise, services, or personal property, or for the rendering of personal services, or for public conveyance or transportation on land, water, or in the air, including the stations and terminals thereof and the garaging of vehicles, or where food or beverages of any kind are sold for consumption on the premises, or where public amusement, entertainment, sports, or recreation of any kind is offered with or without charge, or where medical service or care is made available, or where the public gathers, congregates, or assembles for amusement, recreation, or public purposes, or public halls, public elevators, and public washrooms of buildings and structures occupied by two or more tenants, or by the owner and one or more tenants, or any public library or educational institution, or schools of special instruction, or nursery schools, or day care centers or children's camps: PROVIDED, That nothing contained in this definition shall be construed to include or apply to any institute, bona fide club, or place of accommodation, which is by its nature distinctly private, including fraternal organizations, though where public use is permitted that use shall be covered by this chapter; nor shall anything contained in this definition apply to any educational facility, columbarium, crematory, mausoleum, or cemetery operated or maintained by a bona fide religious or sectarian institution.

(3) "Commission" means the Washington state human rights commission.

(4) "Complainant" means the person who files a complaint in a real estate transaction.

(5) "Covered multifamily dwelling" means: (a) Buildings consisting of four or more dwelling units if such buildings have one or more elevators; and (b) ground floor dwelling units in other buildings consisting of four or more dwelling units.

(6) "Credit transaction" includes any open or closed end credit transaction, whether in the nature of a loan, retail installment transaction, credit card issue or charge, or otherwise, and whether for personal or for business purposes, in which a service, finance, or interest charge is imposed, or which provides for repayment in scheduled payments, when such credit is extended in the regular course of any trade or commerce, including but not limited to transactions by banks, savings and loan associations or other financial lending institutions of whatever nature, stock brokers, or by a merchant or mercantile establishment which as part of its ordinary business permits or provides that payment for purchases of property or service therefrom may be deferred.

(7)(a) "Disability" means the presence of a sensory, mental, or physical impairment that:

(i) Is medically cognizable or diagnosable; or

(ii) Exists as a record or history; or

(iii) Is perceived to exist whether or not it exists in fact.

(b) A disability exists whether it is temporary or permanent, common or uncommon, mitigated or unmitigated, or whether or not it limits the ability to work generally or work at a particular job or whether or not it limits any other activity within the scope of this chapter.

(c) For purposes of this definition, "impairment" includes, but is not limited to:

(i) Any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological, musculoskeletal, special sense organs, respiratory, including speech organs, cardiovascular, reproductive, digestive, genitor-urinary, hemic and lymphatic, skin, and endocrine; or

(ii) Any mental, developmental, traumatic, or psychological disorder, including but not limited to cognitive limitation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(d) Only for the purposes of qualifying for reasonable accommodation in employment, an impairment must be known or shown through an interactive process to exist in fact and:

(i) The impairment must have a substantially limiting effect upon the individual's ability to perform his or her job, the individual's ability to apply or be considered for a job, or the individual's access to equal benefits, privileges, or terms or conditions of employment; or

(ii) The employee must have put the employer on notice of the existence of an impairment, and medical documentation must establish a reasonable likelihood that engaging in job functions without an accommodation would aggravate the impairment to the extent that it would create a substantially limiting effect.

(e) For purposes of (d) of this subsection, a limitation is not substantial if it has only a trivial effect.

(8) "Dog guide" means a dog that is trained for the purpose of guiding blind persons or a dog that is trained for the purpose of assisting hearing impaired persons.

(9) "Dwelling" means any building, structure, or portion thereof that is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land that is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

(10) "Employee" does not include any individual employed by his or her parents, spouse, or child, or in the domestic service of any person.

(11) "Employer" includes any person acting in the interest of an employer, directly or indirectly, who employs eight or more persons, and does not include any religious or sectarian organization not organized for private profit.

(12) "Employment agency" includes any person undertaking with or without compensation to recruit, procure, refer, or place employees for an employer.

(13) "Families with children status" means one or more individuals who have not attained the age of eighteen years being domiciled with a parent or another person having legal custody of such individual or individuals, or with the designee of such parent or other person having such legal custody, with the written permission of such parent or other person. Families with children status also applies to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of eighteen years.

(14) "Full enjoyment of" includes the right to purchase any service, commodity, or article of personal property offered or sold on, or by, any establishment to the public, and the admission of any person to accommodations, advantages, facilities, or privileges of any place of public resort, accommodation, assemblage, or amusement, without acts directly or indirectly causing persons of any particular race, creed, color, sex, sexual orientation, national origin, or with any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by a person with a disability, to be treated as not welcome, accepted, desired, or solicited.

(15) "Honorably discharged veteran or military status" means a person who is:

(a) A veteran, as defined in RCW 41.04.007; or

(b) An active or reserve member in any branch of the armed forces of the United States, including the national guard, coast guard, and armed forces reserves.

(16) "Labor organization" includes any organization which exists for the purpose, in whole or in part, of dealing with employers concerning grievances or terms or conditions of employment, or for other mutual aid or protection in connection with employment.

(17) "Marital status" means the legal status of being married, single, separated, divorced, or widowed.

(18) "National origin" includes "ancestry."

(19) "Person" includes one or more individuals, partnerships, associations, organizations, corporations, cooperatives, legal representatives, trustees and receivers, or any group of persons; it includes any owner, lessee, proprietor, manager, agent, or employee, whether one or more natural persons; and further includes any political or civil subdivisions of the state and any agency or instrumentality of the state or of any political or civil subdivision thereof.

(20) "Premises" means the interior or exterior spaces, parts, components, or elements of a building, including individual dwelling units and the public and common use areas of a building.

(21) "Real estate transaction" includes the sale, appraisal, brokering, exchange, purchase, rental, or lease of real property, transacting or applying for a real estate loan, or the provision of brokerage services.

(22) "Real property" includes buildings, structures, dwellings, real estate, lands, tenements, leaseholds, interests in real estate cooperatives, condominiums, and hereditaments, corporeal and incorporeal, or any interest therein.

(23) "Respondent" means any person accused in a complaint or amended complaint of an unfair practice in a real estate transaction.

(24) "Service animal" means an animal that is trained for the purpose of assisting or accommodating a sensory, mental, or physical disability of a person with a disability.

(25) "Sex" means gender.

(26) "Sexual orientation" means heterosexuality, homosexuality, bisexuality, and gender expression or identity. As used in this definition, "gender expression or identity" means having or being perceived as having a gender identity, self-image, appearance, behavior, or expression, whether or not that gender identity, self-image, appearance, behavior, or expression is different from that traditionally associated with the sex assigned to that person at birth. [2009 c 187 § 3. Prior: 2007 c 317 § 2; 2007 c 187 § 4; 2006 c 4 § 4; 1997 c 271 § 3; 1995 c 259 § 2; prior: 1993 c 510 § 4; 1993 c 69 § 3; prior: 1985 c 203 § 2; 1985 c 185 § 2; 1979 c 127 § 3; 1973 c 141 § 4; 1969 ex.s. c 167 § 3; 1961 c 103 § 1; 1957 c 37 § 4; 1949 c 183 § 3; Rem. Supp. 1949 § 7614-22.]

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

Finding—2007 c 317: "The legislature finds that the supreme court, in its opinion in *McClarty v. Totem Electric,* 157 Wn.2d 214, 137 P.3d 844 (2006), failed to recognize that the law against discrimination affords to state residents protections that are wholly independent of those afforded by the federal Americans with disabilities act of 1990, and that the law against discrimination has provided such protections for many years prior to passage of the federal act." [2007 c 317 § 1.]

Retroactive application—2007 c 317: "This act is remedial and retroactive, and applies to all causes of action occurring before July 6, 2006, and to all causes of action occurring on or after July 22, 2007." [2007 c 317 § 3.]

Effective date—1995 c 259: See note following RCW 49.60.010.

Severability—1993 c 510: See note following RCW 49.60.010.

Severability—1993 c 69: See note following RCW 49.60.030.

Severability—1969 ex.s. c 167: See note following RCW 49.60.010.

Construction—1961 c 103: "Nothing herein shall be construed to render any person or corporation liable for breach of preexisting contracts by reason of compliance by such person or corporation with this act." [1961 c 103 § 4.]

Severability—1957 c 37: See note following RCW 49.60.010.

Severability—1949 c 183: See note following RCW 49.60.010.

49.60.215 Unfair practices of places of public resort, accommodation, assemblage, amusement. It shall be an unfair practice for any person or the person's agent or employee to commit an act which directly or indirectly results in any distinction, restriction, or discrimination, or the requiring of any person to pay a larger sum than the uniform rates charged other persons, or the refusing or withholding from any person the admission, patronage, custom, presence, frequenting, dwelling, staying, or lodging in any place of public resort, accommodation, assemblage, or amusement, except for conditions and limitations established by law and applicable to all persons, regardless of race, creed, color, national origin, sexual orientation, sex, honorably discharged veteran or military status, status as a mother breastfeeding her child, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by a person with a disability: PROVIDED, That this section shall not be construed to require structural changes, modifications, or additions to make any place accessible to a person with a disability except as otherwise required by law: PROVIDED, That behavior or actions constituting a risk to property or other persons can be grounds for refusal and shall not constitute an unfair practice. [2009 c 164 § 2; 2007 c 187 § 12; 2006 c 4 § 13; 1997 c 271 § 13; 1993 c 510 § 16. Prior: 1985 c 203 § 1; 1985 c 90 § 6; 1979 c 127 § 7; 1957 c 37 § 14.]

Severability—1993 c 510: See note following RCW 49.60.010.

Denial of civil rights: RCW 9.91.010.

49.60.500 Community athletics programs—Sex discrimination prohibited—Definitions. (1) No city, town, county, or district may discriminate against any person on the basis of sex in the operation, conduct, or administration of community athletics programs for youth or adults. A third party receiving a lease or permit from a city, town, county, district, or a school district, for a community athletics program also may not discriminate against any person on the basis of sex in the operation, conduct, or administration of community athletics programs for youth or adults.

(2) The definitions in this subsection apply throughout this section.

(a) "Community athletics program" means any athletic program that is organized for the purposes of training for and engaging in athletic activity and competition and that is in any way operated, conducted, administered, or supported by a city, town, county, district, or school district other than those offered by the school and created solely for the students by the school.

(b) "District" means any metropolitan park district, park and recreation service area, or park and recreation district. [2009 c 467 § 2.]

Findings—Declarations—2009 c 467: "The legislature finds and declares:

On June 23, 1972, President Richard Nixon signed into law Title IX of the Education Amendments of 1972 to the 1964 Civil Rights Act. This landmark legislation provides that: "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance...." Title IX has expanded opportunities for males as well as females in educational programs and activities, including ensuring access to athletic opportunities for girls and women in educational institutions and to male and female staff to coaching and athletics administrative positions in educational institutions. The dramatic increases in participation rates at both the high school and college levels since Title IX was passed show that when doors are opened to women and girls, they will participate.

Further, ensuring equality in the state of Washington, the legislature passed an amendment to the state Constitution, ratified by the voters in November 1972, providing "Equality of rights and responsibilities under the law shall not be denied or abridged on account of sex." In 1975, Washington continued to be at the forefront of this issue by adopting legislation that established our own statutory version of the federal Title IX law that prohibited "inequality in the educational opportunities afforded women and girls at all levels of the public schools in Washington state."

Athletic opportunities provide innumerable benefits to participants, including greater academic success, better physical and psychological health, responsible social behaviors, and enhanced interpersonal skills. Athletic scholarships make it possible for some young people to attend college. The Washington state legislature, recognizing the importance of full participation in athletics, has passed numerous bills directed at achieving equity and eliminating discrimination in intercollegiate athletics in the state's institutions of higher education.

Despite advances in educational settings and efforts by some local agencies to expand opportunities in community athletics programs, discrimination still exists that limits these opportunities. It is the intent of the legislature to expand and support equal participation in athletics programs, and provide all sports programs equal access to facilities administered by cities, towns, counties, metropolitan park districts, park and recreation service areas, or park and recreation districts.

Nothing in this act is intended to affect the holding in the Washington state supreme court's ruling in *Darrin v. Gould,* 85 Wn.2d 859, 540 P.2d 882 (1975) and its progeny that held it is not acceptable to discriminate in contact sports on the basis of sex." [2009 c 467 § 1.]

49.60.505 Community athletics programs—Nondiscrimination policy required. (1) By January 1, 2010, each city, town, county, or district operating a community athletics program or issuing permission to a third party for the operation of such program on its facilities shall adopt a policy that specifically prohibits discrimination against any person on the basis of sex in the operation, conduct, or administration of community athletics programs for youth or adults.

(2) It is the responsibility of each city, town, county, or district operating a community athletics program or issuing permission to a third party for the operation of such program on its facilities to publish and disseminate this policy. At a minimum, the nondiscrimination policy should be included in any publication that includes information about the entity's own athletics programs, or about obtaining a permit for operating athletics programs and on the appropriate city, town, county, or district web site.

(3) School districts issuing permission to a third party for the operation of a community athletics program on its facilities shall also follow the provisions of this section but may modify and use existing school district policies and procedures to the extent that is possible. Nothing in this section may be construed to require school districts to monitor compliance, investigate complaints, or otherwise enforce school district policies as to third parties using school district facilities.

(4) Every city, town, county, or district covered by this section should also publish the name, office address, and office telephone number of the employee or employees

responsible for its efforts to comply with and carry out its responsibilities under chapter 467, Laws of 2009. [2009 c 467 § 3.]

Findings—Declarations—2009 c 467: See note following RCW 49.60.500.

Chapter 49.74 RCW
AFFIRMATIVE ACTION

Sections

49.74.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. *(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*

49.74.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. ***(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 132.]

Chapter 49.77 RCW
MILITARY FAMILY LEAVE ACT

Sections

49.77.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. *(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*

49.77.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. ***(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 133.]

Chapter 49.78 RCW
FAMILY LEAVE

Sections

49.78.020 Definitions. *(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*
49.78.904 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. *(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*

49.78.020 Definitions. ***(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Child" means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is: (a) Under eighteen years of age; or (b) eighteen years of age or older and incapable of self-care because of a mental or physical disability.

(2) "Department" means the department of labor and industries.

(3) "Director" means the director of the department.

(4)(a) "Employee" means a person who has been employed: (i) For at least twelve months by the employer with respect to whom leave is requested under RCW 49.78.220; and (ii) for at least one thousand two hundred fifty hours of service with the employer during the previous twelve-month period.

(b) "Employee" does not mean a person who is employed at a worksite at which the employer as defined in (a) of this subsection employs less than fifty employees if the total number of employees employed by that employer within seventy-five miles of that worksite is less than fifty.

(5) "Employer" means: (a) Any person, firm, corporation, partnership, business trust, legal representative, or other business entity which engages in any business, industry, profession, or activity in this state and includes any unit of local government including, but not limited to, a county, city, town, municipal corporation, quasi-municipal corporation, or political subdivision, which employs fifty or more employees for each working day during each of twenty or more calendar workweeks in the current or preceding calendar year; (b) the state, state institutions, and state agencies; and (c) any unit of local government including, but not limited to, a county, city, town, municipal corporation, quasi-municipal corporation, or political subdivision.

(6) "Employment benefits" means all benefits provided or made available to employees by an employer, including group life insurance, health insurance, disability insurance, sick leave, annual leave, educational benefits, and pensions except benefits that are provided by a practice or written policy of an employer or through an employee benefit plan as defined in 29 U.S.C. Sec. 1002(3).

(7) "Family member" means a child, parent, spouse, or state registered domestic partner of an employee.

(8) "Health care provider" means: (a) A person licensed as a physician under chapter 18.71 RCW or an osteopathic physician and surgeon under chapter 18.57 RCW; (b) a person licensed as an advanced registered nurse practitioner under chapter 18.79 RCW; or (c) any other person deter-

mined by the director to be capable of providing health care services.

(9) "Intermittent leave" is leave taken in separate blocks of time due to a single qualifying reason.

(10) "Leave for a family member's serious health condition" means leave as described in RCW 49.78.220(1)(c).

(11) "Leave for the birth or placement of a child" means leave as described in RCW 49.78.220(1) (a) or (b).

(12) "Leave for the employee's serious health condition" means leave as described in RCW 49.78.220(1)(d).

(13) "Parent" means the biological or adoptive parent of an employee or an individual who stood in loco parentis to an employee when the employee was a child.

(14) "Period of incapacity" means an inability to work, attend school, or perform other regular daily activities because of the serious health condition, treatment of that condition or recovery from it, or subsequent treatment in connection with such inpatient care.

(15) "Reduced leave schedule" means a leave schedule that reduces the usual number of hours per workweek, or hours per workday, of an employee.

(16)(a) "Serious health condition" means an illness, injury, impairment, or physical or mental condition that involves:

(i) Inpatient care in a hospital, hospice, or residential medical care facility, including any period of incapacity; or

(ii) Continuing treatment by a health care provider. A serious health condition involving continuing treatment by a health care provider includes any one or more of the following:

(A) A period of incapacity of more than three consecutive calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:

(I) Treatment two or more times by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services under orders of, or on referral by, a health care provider; or

(II) Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider;

(B) Any period of incapacity due to pregnancy, or for prenatal care;

(C) Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which:

(I) Requires periodic visits for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider;

(II) Continues over an extended period of time, including recurring episodes of a single underlying condition; and

(III) May cause episodic rather than a continuing period of incapacity;

(D) A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider; or

(E) Any period of absence to receive multiple treatments, including any period of recovery from the treatments, by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment, such as cancer, severe arthritis, or kidney disease.

(b) Treatment for purposes of (a) of this subsection includes, but is not limited to, examinations to determine if a serious health condition exists and evaluations of the condition. Treatment does not include routine physical examinations, eye examinations, or dental examinations. Under (a)(ii)(A)(II) of this subsection, a regimen of continuing treatment includes, but is not limited to, a course of prescription medication or therapy requiring special equipment to resolve or alleviate the health condition. A regimen of continuing treatment that includes taking over-the-counter medications, such as aspirin, antihistamines, or salves, or bed-rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider, is not, by itself, sufficient to constitute a regimen of continuing treatment for purposes of this chapter.

(c) Conditions for which cosmetic treatments are administered are not "serious health conditions" unless inpatient hospital care is required or unless complications develop. Unless complications arise, the common cold, the flu, ear aches, upset stomach, minor ulcers, headaches other than migraine, routine dental or orthodontia problems, and periodontal disease are examples of conditions that do not meet the definition of a "serious health condition" and do not qualify for leave under this chapter. Restorative dental or plastic surgery after an injury or removal of cancerous growths are serious health conditions provided all the other conditions of this section are met. Mental illness resulting from stress or allergies may be serious health conditions provided all the other conditions of this section are met.

(d) Substance abuse may be a serious health condition if the conditions of this section are met. However, leave may only be taken for treatment for substance abuse by a health care provider or by a provider of health care services upon referral by a health care provider. Absence from work because of the employee's use of the substance, rather than for treatment, does not qualify for leave under this chapter.

(e) Absences attributable to incapacity under (a)(ii)(B) or (C) of this subsection qualify for leave under this chapter even though the employee or the immediate family member does not receive treatment from a health care provider during the absence, and even if the absence does not last more than three days.

(17) "Spouse" means a husband or wife, as the case may be, or state registered domestic partner. [2009 c 521 § 135; 2006 c 59 § 2; 1996 c 178 § 14; 1989 1st ex.s. c 11 § 2.]

Effective date—1996 c 178: See note following RCW 18.35.110.

49.78.904 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. ***(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships

or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 134.]

Chapter 49.86 RCW
FAMILY LEAVE INSURANCE

Sections

49.86.030 Eligibility for benefits.
49.86.170 Family leave insurance account.
49.86.210 Reports.
49.86.903 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. *(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*

49.86.030 Eligibility for benefits. Beginning October 1, 2012, family leave insurance benefits are payable to an individual during a period in which the individual is unable to perform his or her regular or customary work because he or she is on family leave if the individual:

(1) Files a claim for benefits in each week in which the individual is on family leave, and as required by rules adopted by the director;

(2) Has been employed for at least six hundred eighty hours in employment during the individual's qualifying year;

(3) Establishes an application year. An application year may not be established if the qualifying year includes hours worked before establishment of a previous application year;

(4) Consents to the disclosure of information or records deemed private and confidential under chapter 50.13 RCW. Initial disclosure of this information and these records by the employment security department to the department is solely for purposes related to the administration of this chapter. Further disclosure of this information or these records is subject to RCW 49.86.020(3);

(5) Discloses whether or not he or she owes child support obligations as defined in RCW 50.40.050; and

(6) Documents that he or she has provided the employer from whom family leave is to be taken with written notice of the individual's intention to take family leave in the same manner as an employee is required to provide notice in RCW 49.78.250. [2009 c 544 § 1; 2007 c 357 § 5.]

Joint legislative task force—2007 c 357: See note following RCW 49.86.005.

49.86.170 Family leave insurance account. The family leave insurance account is created in the custody of the state treasurer. Expenditures from the account may be used only for the purposes of the family leave insurance program. Only the director of the department of labor and industries or the director's designee may authorize expenditures from the account. The account is subject to the allotment procedures under chapter 43.88 RCW. An appropriation is required for administrative expenses, but not for benefit payments. During the 2007-2009 fiscal biennium, the legislature may transfer from the family leave insurance account to the state general fund such amounts as reflect the excess fund balance of the account. [2009 c 4 § 905; 2007 c 357 § 19.]

Effective date—2009 c 4: See note following RCW 28A.505.220.

Joint legislative task force—2007 c 357: See note following RCW 49.86.005.

49.86.210 Reports. Beginning September 1, 2013, the department shall report to the legislature by September 1st of each year on projected and actual program participation, premium rates, fund balances, and outreach efforts. [2009 c 544 § 2; 2007 c 357 § 26.]

Joint legislative task force—2007 c 357: See note following RCW 49.86.005.

49.86.903 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. ***(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 136.]

Chapter 49.90 RCW
SENSORY DISABILITIES

Sections

49.90.010 Sensory disabilities—State agencies—Need for service animal training—Definition.

49.90.010 Sensory disabilities—State agencies—Need for service animal training—Definition. (1) Within this section, "sensory disability" means a sensory condition that materially limits, contributes to limiting, or, if not corrected or accommodated, will probably result in limiting an individual's activities or functioning.

(2) The department of personnel shall adopt rules that authorize state agencies to provide allowances to employees with sensory disabilities who must attend training necessary to attain a new service animal. The employee's absence must be treated in the same manner as that granted to employees who are absent to attend training that supports or improves their job performance, except that the employee shall not be eligible for reimbursement under RCW 43.03.050 or 43.03.060. The department of personnel shall adopt rules as necessary to implement this chapter.

(3) If the necessity to attend training for a new service animal is foreseeable and the training will cause the employee to miss work, the employee shall provide the employer with not less than thirty days' notice, before the date the absence is to begin, of the employee's impending absence. If the date of the training requires the absence to begin in less than thirty days, the employee shall provide notice as is practicable.

(4) An agency may require that a request to attend service animal training be supported by a certification issued by the relevant training organization. The employee must provide, in a timely manner, a copy of the certification to the agency. Certification provided under this section is sufficient if it states: (a) The date on which the service animal training session is scheduled to commence; and (b) the session's duration. [2009 c 294 § 5.]

Effective date—2009 c 294: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 30, 2009]." [2009 c 294 § 11.]

Title 50

UNEMPLOYMENT COMPENSATION

Chapters

50.04 Definitions.
50.12 Administration.
50.16 Funds.
50.20 Benefits and claims.
50.22 Extended and additional benefits.
50.24 Contributions by employers.
50.29 Employer experience rating.
50.38 Labor market information and economic analysis.
50.60 Shared work compensation plans—Benefits.

Chapter 50.04 RCW
DEFINITIONS

Sections

50.04.900 Construction—Title applicable to state registered domestic partnerships—2009 c 521. *(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*

50.04.900 Construction—Title applicable to state registered domestic partnerships—2009 c 521. ***(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*** For the purposes of this title, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 137.]

Chapter 50.12 RCW
ADMINISTRATION

Sections

50.12.070 Employing unit records, reports, and registration—Unified business identifier account number records—Penalty for failure to keep records. *(Effective October 1, 2009.)*
50.12.320 Labor market research—High-demand green industries—Middle or high-wage occupations.

50.12.070 Employing unit records, reports, and registration—Unified business identifier account number records—Penalty for failure to keep records. ***(Effective October 1, 2009.)*** (1)(a) Each employing unit shall keep true and accurate work records, containing such information as the commissioner may prescribe. Such records shall be open to inspection and be subject to being copied by the commissioner or his or her authorized representatives at any reasonable time and as often as may be necessary. The commissioner may require from any employing unit any sworn or unsworn reports with respect to persons employed by it, which he or she deems necessary for the effective administration of this title.

(b) An employer who contracts with another person or entity for work subject to chapter 18.27 or 19.28 RCW shall obtain and preserve a record of the unified business identifier account number for and compensation paid to the person or entity performing the work. In addition to the penalty in subsection (3) of this section, failure to obtain or maintain the record is subject to RCW 39.06.010.

(2)(a) Each employer shall register with the department and obtain an employment security account number. Registration must include the names and social security numbers of the owners, partners, members, or corporate officers of the business, as well as their mailing addresses and telephone numbers and other information the commissioner may by rule prescribe. Registration of corporations must also include the percentage of stock ownership for each corporate officer, delineated by zero percent, less than ten percent, or ten percent or more. Any changes in the owners, partners, members, or corporate officers of the business, and changes in percentage of ownership of the outstanding shares of stock of the corporation, must be reported to the department at intervals prescribed by the commissioner under (b) of this subsection.

(b) Each employer shall make periodic reports at such intervals as the commissioner may by regulation prescribe, setting forth the remuneration paid for employment to workers in its employ, the full names and social security numbers of all such workers, and the total hours worked by each worker and such other information as the commissioner may by regulation prescribe.

(c) If the employing unit fails or has failed to report the number of hours in a reporting period for which a worker worked, such number will be computed by the commissioner and given the same force and effect as if it had been reported by the employing unit. In computing the number of such hours worked, the total wages for the reporting period, as reported by the employing unit, shall be divided by the dollar

amount of the state's minimum wage in effect for such reporting period and the quotient, disregarding any remainder, shall be credited to the worker: PROVIDED, That although the computation so made will not be subject to appeal by the employing unit, monetary entitlement may be redetermined upon request if the department is provided with credible evidence of the actual hours worked. Benefits paid using computed hours are not considered an overpayment and are not subject to collections when the correction of computed hours results in an invalid or reduced claim; however:

(i) A contribution paying employer who fails to report the number of hours worked will have its experience rating account charged for all benefits paid that are based on hours computed under this subsection; and

(ii) An employer who reimburses the trust fund for benefits paid to workers and fails to report the number of hours worked shall reimburse the trust fund for all benefits paid that are based on hours computed under this subsection.

(3) Any employer who fails to keep and preserve records required by this section shall be subject to a penalty determined by the commissioner but not to exceed two hundred fifty dollars or two hundred percent of the quarterly tax for each offense, whichever is greater. [2009 c 432 § 11; 2008 c 120 § 7; 2007 c 146 § 1; 1997 c 54 § 2; 1983 1st ex.s. c 23 § 8; 1977 ex.s. c 33 § 3; 1975 1st ex.s. c 228 § 2; 1945 c 35 § 46; Rem. Supp. 1945 § 9998-184. Prior: 1943 c 127 § 8; 1939 c 214 § 9; 1937 c 162 § 11.]

Effective date—2009 c 432 § 11: "Section 11 of this act takes effect October 1, 2009." [2009 c 432 § 14.]

Report—2009 c 432: See note following RCW 18.27.062.

Conflict with federal requirements—Severability—2008 c 120: See notes following RCW 18.27.030.

Conflict with federal requirements—Severability—2007 c 146: See notes following RCW 50.04.080.

Conflict with federal requirements—Effective dates—Construction—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

Effective dates—Construction—1977 ex.s. c 33: See notes following RCW 50.04.030.

Effective date—1975 1st ex.s. c 228: See note following RCW 50.04.355.

50.12.320 Labor market research—High-demand green industries—Middle or high-wage occupations. The employment security department, in consultation with the *department, the workforce board, and the **leadership team must take the following actions:

(1) Conduct and update labor market research on a biennial basis to analyze the current public and private labor market and projected job growth in the green economy, the current and projected recruitment and skill requirement of public and private green economy employers, the wage and benefits ranges of jobs within green economy industries, and the education and training requirements of entry-level and incumbent workers in those industries;

(2) Propose which industries will be considered high-demand green industries, based on current and projected job creation and their strategic importance to the development of the state's green economy; and

(3) Define which family-sustaining wage and benefits ranges within green economy industries will be considered middle or high-wage occupations and occupations that are part of career pathways to the same. [2009 c 536 § 11.]

Reviser's note: *(1) "Department" apparently refers to "department" as defined in RCW 43.330.010.

**(2) The leadership team was created in 2009 c 536 § 3, which was vetoed.

Short title—2009 c 536: See note following RCW 43.330.370.

Chapter 50.16 RCW
FUNDS

Sections

50.16.010 Unemployment compensation fund—Administrative contingency fund—Federal interest payment fund.

50.16.010 Unemployment compensation fund—Administrative contingency fund—Federal interest payment fund. (1) There shall be maintained as special funds, separate and apart from all public moneys or funds of this state an unemployment compensation fund, an administrative contingency fund, and a federal interest payment fund, which shall be administered by the commissioner exclusively for the purposes of this title, and to which RCW 43.01.050 shall not be applicable.

(2)(a) The unemployment compensation fund shall consist of:

(i) All contributions collected under RCW 50.24.010 and payments in lieu of contributions collected pursuant to the provisions of this title;

(ii) Any property or securities acquired through the use of moneys belonging to the fund;

(iii) All earnings of such property or securities;

(iv) Any moneys received from the federal unemployment account in the unemployment trust fund in accordance with Title XII of the social security act, as amended;

(v) All money recovered on official bonds for losses sustained by the fund;

(vi) All money credited to this state's account in the unemployment trust fund pursuant to section 903 of the social security act, as amended;

(vii) All money received from the federal government as reimbursement pursuant to section 204 of the federal-state extended compensation act of 1970 (84 Stat. 708-712; 26 U.S.C. Sec. 3304); and

(viii) All moneys received for the fund from any other source.

(b) All moneys in the unemployment compensation fund shall be commingled and undivided.

(3)(a) Except as provided in (b) of this subsection, the administrative contingency fund shall consist of:

(i) All interest on delinquent contributions collected pursuant to this title;

(ii) All fines and penalties collected pursuant to the provisions of this title;

(iii) All sums recovered on official bonds for losses sustained by the fund; and

(iv) Revenue received under RCW 50.24.014.

(b) All fees, fines, forfeitures, and penalties collected or assessed by a district court because of the violation of this title or rules adopted under this title shall be remitted as provided in chapter 3.62 RCW.

(c) Except as provided in (d) of this subsection, moneys available in the administrative contingency fund, other than money in the special account created under RCW 50.24.014, shall be expended upon the direction of the commissioner, with the approval of the governor, whenever it appears to him or her that such expenditure is necessary solely for:

(i) The proper administration of this title and that insufficient federal funds are available for the specific purpose to which such expenditure is to be made, provided, the moneys are not substituted for appropriations from federal funds which, in the absence of such moneys, would be made available.

(ii) The proper administration of this title for which purpose appropriations from federal funds have been requested but not yet received, provided, the administrative contingency fund will be reimbursed upon receipt of the requested federal appropriation.

(iii) The proper administration of this title for which compliance and audit issues have been identified that establish federal claims requiring the expenditure of state resources in resolution. Claims must be resolved in the following priority: First priority is to provide services to eligible participants within the state; second priority is to provide substitute services or program support; and last priority is the direct payment of funds to the federal government.

(d)(i) During the 2007-2009 fiscal biennium, moneys available in the administrative contingency fund, other than money in the special account created under RCW 50.24.014(1)(a), shall be expended as appropriated by the legislature for: (A) The cost of the job skills or worker retraining programs at the community and technical colleges and administrative costs at the state board for community and technical colleges; and (B) reemployment services such as business and project development assistance, local economic development capacity building, and local economic development financial assistance at the department of community, trade, and economic development. The remaining appropriation may be expended as specified in (c) of this subsection.

(ii) During the 2009-2011 fiscal biennium, moneys available in the administrative contingency fund, other than money in the special account created under RCW 50.24.014(1)(a), shall be expended by the department of social and health services as appropriated by the legislature for employment and training services and programs in the WorkFirst program, and for the administrative costs of state agencies participating in the WorkFirst program. The remaining appropriation may be expended as specified in (c) of this subsection.

(4) Money in the special account created under RCW 50.24.014(1)(a) may only be expended, after appropriation, for the purposes specified in this section and RCW 50.62.010, 50.62.020, 50.62.030, 50.24.014, 50.44.053, and 50.22.010. [2009 c 564 § 946; 2009 c 4 § 906; 2008 c 329 § 915; 2007 c 327 § 4; 2006 c 13 § 18. Prior: 2005 c 518 § 933; prior: 2003 2nd sp.s. c 4 § 23; 2003 1st sp.s. c 25 § 925; 2002 c 371 § 914; prior: 1993 c 483 § 7; 1993 c 226 § 10; 1993 c 226 § 9; 1991 sp.s. c 13 § 59; 1987 c 202 § 218; 1985 ex.s. c 5 § 6; 1983 1st ex.s. c 13 § 5; 1980 c 142 § 1; 1977 ex.s. c 292 § 24; 1973 c 73 § 4; 1969 ex.s. c 199 § 27; 1959 c 170 § 1; 1955 c 286 § 2; 1953 ex.s. c 8 § 5; 1945 c 35 § 60; Rem. Supp. 1945 § 9998-198; prior: 1943 c 127 § 6; 1941 c 253 §§ 7, 10; 1939 c 214 § 11; 1937 c 162 § 13.]

Expiration date—2009 c 564 § 946: "Section *946 of this act expires June 30, 2016." [2009 c 564 § 963.]

***Reviser's note:** During the course of passage of 2009 c 564 the section numbering was changed, but the section reference in section 963 was not changed accordingly. The amendments to RCW 43.325.040 were apparently intended to expire on June 30, 2016.

Effective date—2009 c 564: See note following RCW 2.68.020.

Effective date—2009 c 4: See note following RCW 28A.505.220.

Severability—Effective date—2008 c 329: See notes following RCW 28B.105.110.

Severability—Conflict with federal requirements—Effective date—2007 c 327: See notes following RCW 50.24.014.

Retroactive application—2006 c 13 §§ 8-22: See note following RCW 50.04.293.

Conflict with federal requirements—Part headings not law—Severability—2006 c 13: See notes following RCW 50.20.120.

Severability—Effective date—2005 c 518: See notes following RCW 28A.500.030.

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Severability—Effective date—2003 1st sp.s. c 25: See notes following RCW 19.28.351.

Severability—Effective date—2002 c 371: See notes following RCW 9.46.100.

Conflict with federal requirements—Severability—1993 c 483: See notes following RCW 50.04.293.

Effective dates—1993 c 226 §§ 10, 12, and 14: "(1) Sections 10 and 12 of this act shall take effect June 30, 1999;

(2) Section 14 of this act shall take effect January 1, 1998." [1993 c 226 § 20.]

Conflict with federal requirements—1993 c 226: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1993 c 226 § 21.]

Severability—1993 c 226: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1993 c 226 § 22.]

Application—1993 c 226: "This act applies to tax rate years beginning with tax rate year 1994." [1993 c 226 § 23.]

Effective dates—Severability—1991 sp.s. c 13: See notes following RCW 18.08.240.

Intent—1987 c 202: See note following RCW 2.04.190.

Conflict with federal requirements—Severability—1985 ex.s. c 5: See notes following RCW 50.62.010.

Conflict with federal requirements—1983 1st ex.s. c 13: "If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state." [1983 1st ex.s. c 13 § 13.]

Effective dates—1977 ex.s. c 292: See note following RCW 50.04.116.

Effective dates—1973 c 73: See note following RCW 50.04.030.

Chapter 50.20 RCW
BENEFITS AND CLAIMS

Sections

50.20.050 Disqualification for leaving work voluntarily without good cause *(as amended by 2009 c 247)*.
50.20.050 Disqualification for leaving work voluntarily without good cause *(as amended by 2009 c 493)*.
50.20.120 Amount of benefits.
50.20.1201 Amount of benefits—Applicable May 3, 2009, for claims effective before, on, or after May 3, 2009, through January 2, 2010.

50.20.050 Disqualification for leaving work voluntarily without good cause *(as amended by 2009 c 247)*. (1) With respect to claims that have an effective date before January 4, 2004:

(a) An individual shall be disqualified from benefits beginning with the first day of the calendar week in which he or she has left work voluntarily without good cause and thereafter for seven calendar weeks and until he or she has obtained bona fide work in employment covered by this title and earned wages in that employment equal to seven times his or her weekly benefit amount.

The disqualification shall continue if the work obtained is a mere sham to qualify for benefits and is not bona fide work. In determining whether work is of a bona fide nature, the commissioner shall consider factors including but not limited to the following:

(i) The duration of the work;

(ii) The extent of direction and control by the employer over the work; and

(iii) The level of skill required for the work in light of the individual's training and experience.

(b) An individual shall not be considered to have left work voluntarily without good cause when:

(i) He or she has left work to accept a bona fide offer of bona fide work as described in (a) of this subsection;

(ii) The separation was because of the illness or disability of the claimant or the death, illness, or disability of a member of the claimant's immediate family if the claimant took all reasonable precautions, in accordance with any regulations that the commissioner may prescribe, to protect his or her employment status by having promptly notified the employer of the reason for the absence and by having promptly requested reemployment when again able to assume employment: PROVIDED, That these precautions need not have been taken when they would have been a futile act, including those instances when the futility of the act was a result of a recognized labor/management dispatch system;

(iii) He or she has left work to relocate for the spouse's employment that is due to an employer-initiated mandatory transfer that is outside the existing labor market area if the claimant remained employed as long as was reasonable prior to the move; or

(iv) The separation was necessary to protect the claimant or the claimant's immediate family members from domestic violence, as defined in RCW 26.50.010, or stalking, as defined in RCW 9A.46.110.

(c) In determining under this subsection whether an individual has left work voluntarily without good cause, the commissioner shall only consider work-connected factors such as the degree of risk involved to the individual's health, safety, and morals, the individual's physical fitness for the work, the individual's ability to perform the work, and such other work connected factors as the commissioner may deem pertinent, including state and national emergencies. Good cause shall not be established for voluntarily leaving work because of its distance from an individual's residence where the distance was known to the individual at the time he or she accepted the employment and where, in the judgment of the department, the distance is customarily traveled by workers in the individual's job classification and labor market, nor because of any other significant work factor which was generally known and present at the time he or she accepted employment, unless the related circumstances have so changed as to amount to a substantial involuntary deterioration of the work factor or unless the commissioner determines that other related circumstances would work an unreasonable hardship on the individual were he or she required to continue in the employment.

(d) Subsection (1)(a) and (c) of this section shall not apply to an individual whose marital status or domestic responsibilities cause him or her to leave employment. Such an individual shall not be eligible for unemployment insurance benefits beginning with the first day of the calendar week in which he or she left work and thereafter for seven calendar weeks and until he or she has requalified, either by obtaining bona fide work in employment covered by this title and earning wages in that employment equal to seven times his or her weekly benefit amount or by reporting in person to the department during ten different calendar weeks and certifying on each occasion that he or she is ready, able, and willing to immediately accept any suitable work which may be offered, is actively seeking work pursuant to customary trade practices, and is utilizing such employment counseling and placement services as are available through the department. This subsection does not apply to individuals covered by (b)(ii) or (iii) of this subsection.

(2) With respect to claims that have an effective date on or after January 4, 2004:

(a) An individual shall be disqualified from benefits beginning with the first day of the calendar week in which he or she has left work voluntarily without good cause and thereafter for seven calendar weeks and until he or she has obtained bona fide work in employment covered by this title and earned wages in that employment equal to seven times his or her weekly benefit amount.

The disqualification shall continue if the work obtained is a mere sham to qualify for benefits and is not bona fide work. In determining whether work is of a bona fide nature, the commissioner shall consider factors including but not limited to the following:

(i) The duration of the work;

(ii) The extent of direction and control by the employer over the work; and

(iii) The level of skill required for the work in light of the individual's training and experience.

(b) An individual is not disqualified from benefits under (a) of this subsection when:

(i) He or she has left work to accept a bona fide offer of bona fide work as described in (a) of this subsection;

(ii) The separation was necessary because of the illness or disability of the claimant or the death, illness, or disability of a member of the claimant's immediate family if:

(A) The claimant pursued all reasonable alternatives to preserve his or her employment status by requesting a leave of absence, by having promptly notified the employer of the reason for the absence, and by having promptly requested reemployment when again able to assume employment. These alternatives need not be pursued, however, when they would have been a futile act, including those instances when the futility of the act was a result of a recognized labor/management dispatch system; and

(B) The claimant terminated his or her employment status, and is not entitled to be reinstated to the same position or a comparable or similar position;

(iii)(A) With respect to claims that have an effective date before July 2, 2006, he or she: (I) Left work to relocate for the spouse's employment that, due to a mandatory military transfer: (1) Is outside the existing labor market area; and (2) is in Washington or another state that, pursuant to statute, does not consider such an individual to have left work voluntarily without good cause; and (II) remained employed as long as was reasonable prior to the move;

(B) With respect to claims that have an effective date on or after July 2, 2006, he or she: (I) Left work to relocate for the spouse's employment that, due to a mandatory military transfer, is outside the existing labor market area; and (II) remained employed as long as was reasonable prior to the move;

(iv) The separation was necessary to protect the claimant or the claimant's immediate family members from domestic violence, as defined in RCW 26.50.010, or stalking, as defined in RCW 9A.46.110;

(v) The individual's usual compensation was reduced by twenty-five percent or more;

(vi) The individual's usual hours were reduced by twenty-five percent or more;

(vii) The individual's worksite changed, such change caused a material increase in distance or difficulty of travel, and, after the change, the commute was greater than is customary for workers in the individual's job classification and labor market;

(viii) The individual's worksite safety deteriorated, the individual reported such safety deterioration to the employer, and the employer failed to correct the hazards within a reasonable period of time;

(ix) The individual left work because of illegal activities in the individual's worksite, the individual reported such activities to the employer, and the employer failed to end such activities within a reasonable period of time;

(x) The individual's usual work was changed to work that violates the individual's religious convictions or sincere moral beliefs; or

(xi) The individual left work to enter an apprenticeship program approved by the Washington state apprenticeship training council. Benefits

are payable beginning Sunday of the week prior to the week in which the individual begins active participation in the apprenticeship program.

(3) Notwithstanding subsection (2) of this section, for separations occurring on or after July 26, 2009, an individual who was simultaneously employed in full-time employment and part-time employment and is otherwise eligible for benefits from the loss of the full-time employment shall not be disqualified from benefits because the individual:

(a) Voluntarily quit the part-time employment before the loss of the full-time employment; and

(b) Did not have prior knowledge that he or she would be separated from full-time employment. [2009 c 247 § 1; 2008 c 323 § 1; 2006 c 13 § 2. Prior: 2006 c 12 § 1; 2003 2nd sp.s. c 4 § 4; 2002 c 8 § 1; 2000 c 2 § 12; 1993 c 483 § 8; 1982 1st ex.s. c 18 § 6; 1981 c 35 § 4; 1980 c 74 § 5; 1977 ex.s. c 33 § 4; 1970 ex.s. c 2 § 21; 1953 ex.s. c 8 § 8; 1951 c 215 § 12; 1949 c 214 § 12; 1947 c 215 § 15; 1945 c 35 § 73; Rem. Supp. 1949 § 9998-211; prior: 1943 c 127 § 3; 1941 c 253 § 3; 1939 c 214 § 3; 1937 c 162 § 5.]

50.20.050 Disqualification for leaving work voluntarily without good cause ***(as amended by 2009 c 493).*** (1) ((~~With respect to claims that have an effective date before January 4, 2004:~~

~~(a) An individual shall be disqualified from benefits beginning with the first day of the calendar week in which he or she has left work voluntarily without good cause and thereafter for seven calendar weeks and until he or she has obtained bona fide work in employment covered by this title and earned wages in that employment equal to seven times his or her weekly benefit amount.~~

~~The disqualification shall continue if the work obtained is a mere sham to qualify for benefits and is not bona fide work. In determining whether work is of a bona fide nature, the commissioner shall consider factors including but not limited to the following:~~

~~(i) The duration of the work;~~

~~(ii) The extent of direction and control by the employer over the work; and~~

~~(iii) The level of skill required for the work in light of the individual's training and experience.~~

~~(b) An individual shall not be considered to have left work voluntarily without good cause when:~~

~~(i) He or she has left work to accept a bona fide offer of bona fide work as described in (a) of this subsection;~~

~~(ii) The separation was because of the illness or disability of the claimant or the death, illness, or disability of a member of the claimant's immediate family if the claimant took all reasonable precautions, in accordance with any regulations that the commissioner may prescribe, to protect his or her employment status by having promptly notified the employer of the reason for the absence and by having promptly requested reemployment when again able to assume employment: PROVIDED, That these precautions need not have been taken when they would have been a futile act, including those instances when the futility of the act was a result of a recognized labor/management dispatch system;~~

~~(iii) He or she has left work to relocate for the spouse's employment that is due to an employer-initiated mandatory transfer that is outside the existing labor market area if the claimant remained employed as long as was reasonable prior to the move; or~~

~~(iv) The separation was necessary to protect the claimant or the claimant's immediate family members from domestic violence, as defined in RCW 26.50.010, or stalking, as defined in RCW 9A.46.110.~~

~~(c) In determining under this subsection whether an individual has left work voluntarily without good cause, the commissioner shall only consider work-connected factors such as the degree of risk involved to the individual's health, safety, and morals, the individual's physical fitness for the work, the individual's ability to perform the work, and such other work connected factors as the commissioner may deem pertinent, including state and national emergencies. Good cause shall not be established for voluntarily leaving work because of its distance from an individual's residence where the distance was known to the individual at the time he or she accepted the employment and where, in the judgment of the department, the distance is customarily traveled by workers in the individual's job classification and labor market, nor because of any other significant work factor which was generally known and present at the time he or she accepted employment, unless the related circumstances have so changed as to amount to a substantial involuntary deterioration of the work factor or unless the commissioner determines that other related circumstances would work an unreasonable hardship on the individual were he or she required to continue in the employment.~~

~~(d) Subsection (1)(a) and (c) of this section shall not apply to an individual whose marital status or domestic responsibilities cause him or her to leave employment. Such an individual shall not be eligible for unemployment insurance benefits beginning with the first day of the calendar week in which he or she left work and thereafter for seven calendar weeks and until he or she has requalified, either by obtaining bona fide work in employment covered by this title and earning wages in that employment equal to seven times his or her weekly benefit amount or by reporting in person to the department during ten different calendar weeks and certifying on each occasion that he or she is ready, able, and willing to immediately accept any suitable work which may be offered, is actively seeking work pursuant to customary trade practices, and is utilizing such employment counseling and placement services as are available through the department. This subsection does not apply to individuals covered by (b)(ii) or (iii) of this subsection.~~

~~(2)~~)) With respect to claims that have an effective date on or after January 4, 2004, and for separations that occur before September 6, 2009:

(a) An individual shall be disqualified from benefits beginning with the first day of the calendar week in which he or she has left work voluntarily without good cause and thereafter for seven calendar weeks and until he or she has obtained bona fide work in employment covered by this title and earned wages in that employment equal to seven times his or her weekly benefit amount.

The disqualification shall continue if the work obtained is a mere sham to qualify for benefits and is not bona fide work. In determining whether work is of a bona fide nature, the commissioner shall consider factors including but not limited to the following:

(i) The duration of the work;

(ii) The extent of direction and control by the employer over the work; and

(iii) The level of skill required for the work in light of the individual's training and experience.

(b) An individual is not disqualified from benefits under (a) of this subsection when:

(i) He or she has left work to accept a bona fide offer of bona fide work as described in (a) of this subsection;

(ii) The separation was necessary because of the illness or disability of the claimant or the death, illness, or disability of a member of the claimant's immediate family if:

(A) The claimant pursued all reasonable alternatives to preserve his or her employment status by requesting a leave of absence, by having promptly notified the employer of the reason for the absence, and by having promptly requested reemployment when again able to assume employment. These alternatives need not be pursued, however, when they would have been a futile act, including those instances when the futility of the act was a result of a recognized labor/management dispatch system; and

(B) The claimant terminated his or her employment status, and is not entitled to be reinstated to the same position or a comparable or similar position;

(iii)(A) With respect to claims that have an effective date before July 2, 2006, he or she: (I) Left work to relocate for the spouse's employment that, due to a mandatory military transfer: (1) Is outside the existing labor market area; and (2) is in Washington or another state that, pursuant to statute, does not consider such an individual to have left work voluntarily without good cause; and (II) remained employed as long as was reasonable prior to the move;

(B) With respect to claims that have an effective date on or after July 2, 2006, he or she: (I) Left work to relocate for the spouse's employment that, due to a mandatory military transfer, is outside the existing labor market area; and (II) remained employed as long as was reasonable prior to the move;

(iv) The separation was necessary to protect the claimant or the claimant's immediate family members from domestic violence, as defined in RCW 26.50.010, or stalking, as defined in RCW 9A.46.110;

(v) The individual's usual compensation was reduced by twenty-five percent or more;

(vi) The individual's usual hours were reduced by twenty-five percent or more;

(vii) The individual's worksite changed, such change caused a material increase in distance or difficulty of travel, and, after the change, the commute was greater than is customary for workers in the individual's job classification and labor market;

(viii) The individual's worksite safety deteriorated, the individual reported such safety deterioration to the employer, and the employer failed to correct the hazards within a reasonable period of time;

(ix) The individual left work because of illegal activities in the individual's worksite, the individual reported such activities to the employer, and the employer failed to end such activities within a reasonable period of time;

(x) The individual's usual work was changed to work that violates the individual's religious convictions or sincere moral beliefs; or

(xi) The individual left work to enter an apprenticeship program approved by the Washington state apprenticeship training council. Benefits are payable beginning Sunday of the week prior to the week in which the individual begins active participation in the apprenticeship program.

(2) With respect to separations that occur on or after September 6, 2009:

(a) An individual shall be disqualified from benefits beginning with the first day of the calendar week in which he or she has left work voluntarily without good cause and thereafter for seven calendar weeks and until he or she has obtained bona fide work in employment covered by this title and earned wages in that employment equal to seven times his or her weekly benefit amount. Good cause reasons to leave work are limited to reasons listed in (b) of this subsection.

The disqualification shall continue if the work obtained is a mere sham to qualify for benefits and is not bona fide work. In determining whether work is of a bona fide nature, the commissioner shall consider factors including but not limited to the following:

(i) The duration of the work;

(ii) The extent of direction and control by the employer over the work; and

(iii) The level of skill required for the work in light of the individual's training and experience.

(b) An individual has good cause and is not disqualified from benefits under (a) of this subsection only under the following circumstances:

(i) He or she has left work to accept a bona fide offer of bona fide work as described in (a) of this subsection;

(ii) The separation was necessary because of the illness or disability of the claimant or the death, illness, or disability of a member of the claimant's immediate family if:

(A) The claimant pursued all reasonable alternatives to preserve his or her employment status by requesting a leave of absence, by having promptly notified the employer of the reason for the absence, and by having promptly requested reemployment when again able to assume employment. These alternatives need not be pursued, however, when they would have been a futile act, including those instances when the futility of the act was a result of a recognized labor/management dispatch system; and

(B) The claimant terminated his or her employment status, and is not entitled to be reinstated to the same position or a comparable or similar position;

(iii) The claimant: (A) Left work to relocate for the employment of a spouse or domestic partner that is outside the existing labor market area; and (B) remained employed as long as was reasonable prior to the move;

(iv) The separation was necessary to protect the claimant or the claimant's immediate family members from domestic violence, as defined in RCW 26.50.010, or stalking, as defined in RCW 9A.46.110;

(v) The individual's usual compensation was reduced by twenty-five percent or more;

(vi) The individual's usual hours were reduced by twenty-five percent or more;

(vii) The individual's worksite changed, such change caused a material increase in distance or difficulty of travel, and, after the change, the commute was greater than is customary for workers in the individual's job classification and labor market;

(viii) The individual's worksite safety deteriorated, the individual reported such safety deterioration to the employer, and the employer failed to correct the hazards within a reasonable period of time;

(ix) The individual left work because of illegal activities in the individual's worksite, the individual reported such activities to the employer, and the employer failed to end such activities within a reasonable period of time;

(x) The individual's usual work was changed to work that violates the individual's religious convictions or sincere moral beliefs; or

(xi) The individual left work to enter an apprenticeship program approved by the Washington state apprenticeship training council. Benefits are payable beginning Sunday of the week prior to the week in which the individual begins active participation in the apprenticeship program. [2009 c 493 § 3; 2008 c 323 § 1; 2006 c 13 § 2. Prior: 2006 c 12 § 1; 2003 2nd sp.s. c 4 § 4; 2002 c 8 § 1; 2000 c 2 § 12; 1993 c 483 § 8; 1982 1st ex.s. c 18 § 6; 1981 c 35 § 4; 1980 c 74 § 5; 1977 ex.s. c 33 § 4; 1970 ex.s. c 2 § 21; 1953 ex.s. c 8 § 8; 1951 c 215 § 12; 1949 c 214 § 12; 1947 c 215 § 15; 1945 c 35 § 73; Rem. Supp. 1949 § 9998-211; prior: 1943 c 127 § 3; 1941 c 253 § 3; 1939 c 214 § 3; 1937 c 162 § 5.]

Reviser's note: RCW 50.20.050 was amended twice during the 2009 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

Conflict with federal requirements—2009 c 493: See note following RCW 50.29.021.

Conflict with federal requirements—2008 c 323: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [2008 c 323 § 3.]

Conflict with federal requirements—Part headings not law—Severability—2006 c 13: See notes following RCW 50.20.120.

Retroactive application—2006 c 12 § 1: "Section 1 of this act applies retroactively to claims that have an effective date on or after January 4, 2004." [2006 c 12 § 2.]

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Application—2000 c 2 §§ 1, 2, 4, 5, 8, and 12-15: See note following RCW 50.22.150.

Conflict with federal requirements—Severability—Effective date—2000 c 2: See notes following RCW 50.04.355.

Effective dates, applicability—Conflict with federal requirements—Severability—1993 c 483: See notes following RCW 50.04.293.

Severability—Conflict with federal requirements—1982 1st ex.s. c 18: See notes following RCW 50.12.200.

Severability—1981 c 35: See note following RCW 50.22.030.

Severability—1980 c 74: See note following RCW 50.04.323.

Effective dates—Construction—1977 ex.s. c 33: See notes following RCW 50.04.030.

Effective date—1970 ex.s. c 2: See note following RCW 50.04.020.

50.20.120 Amount of benefits. Except as provided in RCW 50.20.1201, benefits shall be payable as provided in this section.

(1) For claims with an effective date on or after April 4, 2004, benefits shall be payable to any eligible individual during the individual's benefit year in a maximum amount equal to the lesser of twenty-six times the weekly benefit amount, as determined in subsection (2) of this section, or one-third of the individual's base year wages under this title.

(2) For claims with an effective date on or after April 24, 2005, an individual's weekly benefit amount shall be an amount equal to three and eighty-five one-hundredths percent of the average quarterly wages of the individual's total wages during the two quarters of the individual's base year in which such total wages were highest.

(3) The maximum and minimum amounts payable weekly shall be determined as of each June 30th to apply to benefit years beginning in the twelve-month period immediately following such June 30th.

(a) The maximum amount payable weekly shall be either four hundred ninety-six dollars or sixty-three percent of the "average weekly wage" for the calendar year preceding such June 30th, whichever is greater.

(b) The minimum amount payable weekly shall be fifteen percent of the "average weekly wage" for the calendar year preceding such June 30th.

(4) If any weekly benefit, maximum benefit, or minimum benefit amount computed herein is not a multiple of one dollar, it shall be reduced to the next lower multiple of one dollar. [2009 c 3 § 3; 2006 c 13 § 1; 2005 c 133 § 3; 2003 2nd sp.s. c 4 § 11; 2002 c 149 § 4; 1993 c 483 § 12; 1984 c 205 § 1; 1983 1st ex.s. c 23 § 11; 1981 c 35 § 5; 1980 c 74 § 3; 1977 ex.s. c 33 § 7; 1970 ex.s. c 2 § 5; 1959 c 321 § 2; 1955 c 209 § 1; 1951 c 265 § 11; 1949 c 214 § 16; 1945 c 35 § 80; Rem. Supp. 1949 § 9998-218. Prior: 1943 c 127 § 1; 1941 c 253 § 1; 1939 c 214 § 1; 1937 c 162 § 3.]

Short title—2009 c 3: "This act may be known and cited as the economic security act of 2009." [2009 c 3 § 1.]

Effective date—2009 c 3: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect April 5, 2009." [2009 c 3 § 15.]

Conflict with federal requirements—2009 c 3: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [2009 c 3 § 16.]

Part headings not law—2006 c 13: "Part headings used in this act are not any part of the law." [2006 c 13 § 25.]

Severability—2006 c 13: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2006 c 13 § 27.]

Conflict with federal requirements—2006 c 13: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [2006 c 13 § 28.]

Findings—Intent—2005 c 133: "The legislature finds that the unemployment insurance system was created to set aside unemployment reserves to be used for the benefit of persons who are unemployed through no fault of their own and to maintain purchasing power and limit the social consequences of unemployment. The legislature further finds that the system is falling short of these goals by failing to recognize the importance of applying liberal construction for the purpose of reducing involuntary unemployment, and the suffering caused by it, to the minimum, and by failing to provide equitable benefits to unemployed workers. The legislature also recognizes the desirability of managing the system to take into account the goal of reducing costs to foster a competitive business climate. The legislature intends to adjust the balance between these goals by reinstating the requirement for liberal construction and making other adjustments in the system that will allow reasonable improvements in benefit equity, including reinstating a weekly benefit calculation based on the wages in the two quarters of the claimant's base year in which wages were the highest. The legislature finds that these adjustments are critical to the health and welfare of unemployed workers, and to the purchasing power essential to the economic health and welfare of communities and the state, and should be implemented as soon as feasible." [2005 c 133 § 1.]

Conflict with federal requirements—2005 c 133: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [2005 c 133 § 11.]

Effective date—2005 c 133: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 22, 2005]." [2005 c 133 § 12.]

Additional employees authorized—2005 c 133: See note following RCW 50.01.010.

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Conflict with federal requirements—Severability—2002 c 149: See notes following RCW 50.22.140.

Effective dates, applicability—Conflict with federal requirements—Severability—1993 c 483: See notes following RCW 50.04.293.

Conflict with federal requirements—1984 c 205: "If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1984 c 205 § 11.]

Severability—1984 c 205: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1984 c 205 § 12.]

Effective dates—1984 c 205: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately [March 21, 1984], except as follows:

(1) Sections 6 and 13 of this act shall take effect on January 1, 1985;

(2) Section 7 of this act shall be effective for compensable weeks of unemployment beginning on or after January 6, 1985; and

(3) Section 9 of this act shall take effect on July 1, 1985." [1984 c 205 § 14.]

Conflict with federal requirements—Effective dates—Construction—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

Construction—Effective dates—Severability—1981 c 35: See notes following RCW 50.22.030.

Severability—Effective dates—1980 c 74: See notes following RCW 50.04.323.

Effective dates—Construction—1977 ex.s. c 33: See notes following RCW 50.04.030.

Effective date—1970 ex.s. c 2: See note following RCW 50.04.020.

Effective date—1959 c 321: See note following RCW 50.20.080.

Severability—1951 c 265: See note following RCW 50.98.070.

50.20.1201 Amount of benefits—Applicable May 3, 2009, for claims effective before, on, or after May 3, 2009, through January 2, 2010. (1) This section applies beginning May 3, 2009.

(2)(a) For claims with an effective date before May 3, 2009, in weeks of unemployment beginning on or after May 3, 2009, an individual's weekly benefit amount shall be the amount established under RCW 50.20.120 and subsection (3) of this section plus an additional forty-five dollars. For individuals who have a balance of regular unemployment benefits available, the weekly benefit amount under this subsection (2)(a) is payable for all remaining weeks of regular, extended, emergency, supplemental, or additional benefits on that claim. For individuals who have exhausted regular benefits but have a balance of training benefits available as provided in RCW 50.22.155 or 50.22.150, the weekly benefit amount under this subsection (2)(a) is payable for all remain-

ing weeks of training benefits, but not for weeks of extended, emergency, supplemental, or additional benefits on that claim unless specifically authorized under federal or state law.

(b) For claims with an effective date on or after May 3, 2009, and before January 3, 2010, an individual's weekly benefit amount shall be the amount established under RCW 50.20.120 and subsection (3) of this section plus an additional forty-five dollars. The weekly benefit amount under this subsection (2)(b) is payable for all weeks of regular, extended, emergency, supplemental, or additional benefits on that claim.

(3)(a) For benefit years beginning before May 3, 2009, in weeks of unemployment beginning on or after May 3, 2009, the minimum amount payable weekly shall be one hundred fifty-five dollars. For individuals who have a balance of regular unemployment benefits available, the minimum amount payable weekly under this subsection (3)(a) is payable for all remaining weeks of regular, extended, emergency, supplemental, or additional benefits on that claim. For individuals who have exhausted regular benefits but have a balance of training benefits available as provided in RCW 50.22.155 or 50.22.150, the minimum amount payable weekly under this subsection (3)(a) is payable for all remaining weeks of training benefits, but not for weeks of extended, emergency, supplemental, or additional benefits on that claim unless specifically authorized under federal or state law.

(b) For benefit years beginning on or after May 3, 2009, and before January 3, 2010, the minimum amount payable weekly shall be one hundred fifty-five dollars. The minimum amount payable weekly under this subsection (3)(b) is payable for all weeks of regular, extended, emergency, supplemental, or additional benefits on that claim.

(4) The weekly benefit amounts and the minimum amounts payable weekly under this section shall increase the maximum benefits payable to the individual under RCW 50.20.120(1) by a corresponding dollar amount.

(5) The weekly benefit amounts under this section shall increase the maximum amount payable weekly, irrespective of the provisions of RCW 50.20.120(3).

(6) Payment of benefits to individuals whose weekly benefit amounts are increased under this section shall be subject to the same terms and conditions under this title that apply to the payment of benefits to individuals whose benefit amounts are established under RCW 50.20.120.

(7) This section does not apply to claims with an effective date on or after January 3, 2010. [2009 c 3 § 2.]

Short title—Effective date—Conflict with federal requirements—2009 c 3: See notes following RCW 50.20.120.

Chapter 50.22 RCW

EXTENDED AND ADDITIONAL BENEFITS

Sections

50.22.005 Collaborative review of programs.
50.22.010 Definitions.
50.22.130 Training benefits program—Intent.
50.22.150 Training benefits—Claims effective before April 5, 2009—Eligibility—Definitions—Payment—Local workforce development council to identify high-demand occupations and occupations in declining employer demand—Rules.
50.22.155 Training benefits—Claims effective on or after April 5, 2009—Eligibility—Definitions—Role of local workforce development councils—Rules.
50.22.157 Training benefits program—Annual report.

50.22.005 Collaborative review of programs. The employment security department shall periodically bring together representatives of the workforce training and education coordinating board, workforce development councils, the state board for community and technical colleges, business, labor, and the legislature to review development and implementation of chapter 566, Laws of 2009 and related programs under this chapter. [2009 c 566 § 7.]

Findings—Intent—Effective date—2009 c 566: See notes following RCW 50.24.014.

50.22.010 Definitions. As used in this chapter, unless the context clearly indicates otherwise:

(1) "Extended benefit period" means a period which:

(a) Begins with the third week after a week for which there is an "on" indicator; and

(b) Ends with the third week after the first week for which there is an "off" indicator: PROVIDED, That no extended benefit period shall last for a period of less than thirteen consecutive weeks, and further that no extended benefit period may begin by reason of an "on" indicator before the fourteenth week after the close of a prior extended benefit period which was in effect with respect to this state.

(2) There is an "on" indicator for this state for a week if the commissioner determines, in accordance with the regulations of the United States secretary of labor, that for the period consisting of such week and the immediately preceding twelve weeks:

(a) The rate of insured unemployment, not seasonally adjusted, equaled or exceeded one hundred twenty percent of the average of such rates for the corresponding thirteen-week period ending in each of the preceding two calendar years and equaled or exceeded five percent; or

(b) For benefits for weeks of unemployment beginning after March 6, 1993:

(i) The average rate of total unemployment, seasonally adjusted, as determined by the United States secretary of labor, for the period consisting of the most recent three months for which data for all states are published before the close of the week equals or exceeds six and one-half percent; and

(ii) The average rate of total unemployment in the state, seasonally adjusted, as determined by the United States secretary of labor, for the three-month period referred to in (b)(i) of this subsection, equals or exceeds one hundred ten percent of the average for either or both of the corresponding three-month periods ending in the two preceding calendar years.

(3) "High unemployment period" means any period of unemployment beginning after March 6, 1993, during which an extended benefit period would be in effect if:

(a) The average rate of total unemployment, seasonally adjusted, as determined by the United States secretary of labor, for the period consisting of the most recent three months for which data for all states are published before the close of the week equals or exceeds eight percent; and

(b) The average rate of total unemployment in the state, seasonally adjusted, as determined by the United States sec-

retary of labor, for the three-month period referred to in (a) of this subsection, equals or exceeds one hundred ten percent of the average for either or both of the corresponding three-month periods ending in the two preceding calendar years.

(4) There is an "off" indicator for this state for a week only if, for the period consisting of such week and immediately preceding twelve weeks, none of the options specified in subsection (2) or (3) of this section result in an "on" indicator.

(5) "Regular benefits" means benefits payable to an individual under this title or under any state law (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. chapter 85) other than extended benefits or additional benefits.

(6) "Extended benefits" means benefits payable for weeks of unemployment beginning in an extended benefit period to an individual under this title or under any state law (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. chapter 85) other than regular or additional benefits.

(7) "Additional benefits" are benefits totally financed by the state and payable under this title to exhaustees by reason of conditions of high unemployment or by reason of other special factors.

(8) "Eligibility period" of an individual means:

(a) The period consisting of the weeks in his or her benefit year which begin in an extended benefit period that is in effect in this state and, if his or her benefit year ends within such extended benefit period, any weeks thereafter which begin in such period; or

(b) For an individual who is eligible for emergency unemployment compensation during the extended benefit period beginning February 15, 2009, the period consisting of the week ending February 28, 2009, through the week ending May 29, 2010.

(9) "Additional benefit eligibility period" of an individual means the period consisting of the weeks in his or her benefit year which begin in an additional benefit period that is in effect and, if his or her benefit year ends within such additional benefit period, any weeks thereafter which begin in such period.

(10) "Exhaustee" means an individual who, with respect to any week of unemployment in his or her eligibility period:

(a) Has received, prior to such week, all of the regular benefits that were payable to him or her under this title or any other state law (including dependents' allowances and regular benefits payable to federal civilian employees and ex-servicemen under 5 U.S.C. chapter 85) in his or her current benefit year that includes such week; or

(b) Has received, prior to such week, all of the regular benefits that were available to him or her under this title or any other state law (including dependents' allowances and regular benefits available to federal civilian employees and ex-servicemen under 5 U.S.C. chapter 85) in his or her current benefit year that includes such week, after the cancellation of some or all of his or her wage credits or the total or partial reduction of his or her rights to regular benefits: PROVIDED, That, for the purposes of (a) and (b), an individual shall be deemed to have received in his or her current benefit year all of the regular benefits that were payable to him or her, or available to him or her, as the case may be, even though:

(i) As a result of a pending appeal with respect to wages or employment, or both, that were not included in the original monetary determination with respect to his or her current benefit year, he or she may subsequently be determined to be entitled to more regular benefits; or

(ii) By reason of the seasonal provisions of another state law, he or she is not entitled to regular benefits with respect to such week of unemployment (although he or she may be entitled to regular benefits with respect to future weeks of unemployment in the next season, as the case may be, in his or her current benefit year), and he or she is otherwise an exhaustee within the meaning of this section with respect to his or her right to regular benefits under such state law seasonal provisions during the season or off season in which that week of unemployment occurs; or

(iii) Having established a benefit year, no regular benefits are payable to him or her during such year because his or her wage credits were canceled or his or her right to regular benefits was totally reduced as the result of the application of a disqualification; or

(c) His or her benefit year having ended prior to such week, he or she has insufficient wages or employment, or both, on the basis of which he or she could establish in any state a new benefit year that would include such week, or having established a new benefit year that includes such week, he or she is precluded from receiving regular benefits by reason of the provision in RCW 50.04.030 which meets the requirement of section 3304(a)(7) of the Federal Unemployment Tax Act, or the similar provision in any other state law; and

(d)(i) Has no right for such week to unemployment benefits or allowances, as the case may be, under the Railroad Unemployment Insurance Act, the Trade Expansion Act of 1962, and such other federal laws as are specified in regulations issued by the United States secretary of labor; and

(ii) Has not received and is not seeking for such week unemployment benefits under the unemployment compensation law of Canada, unless the appropriate agency finally determines that he or she is not entitled to unemployment benefits under such law for such week.

(11) "State law" means the unemployment insurance law of any state, approved by the United States secretary of labor under section 3304 of the internal revenue code of 1954. [2009 c 493 § 4; 1993 c 483 § 15; 1985 ex.s. c 5 § 10; 1983 c 1 § 1; 1982 1st ex.s. c 18 § 2; 1981 c 35 § 7; 1977 ex.s. c 292 § 11; 1973 c 73 § 7; 1971 c 1 § 2.]

Effective date—2009 c 493 § 4: "Section 4 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 14, 2009]." [2009 c 493 § 7.]

Conflict with federal requirements—2009 c 493: See note following RCW 50.29.021.

Effective dates, applicability—Conflict with federal requirements—Severability—1993 c 483: See notes following RCW 50.04.293.

Conflict with federal requirements—Severability—1985 ex.s. c 5: See notes following RCW 50.62.010.

Severability—Conflict with federal requirements—1982 1st ex.s. c 18: See notes following RCW 50.12.200.

Severability—1981 c 35: See note following RCW 50.22.030.

Application—1977 ex.s. c 292 § 11: "The provisions of section 11 of this 1977 amendatory act shall apply to the week ending May 21, 1977, and all weeks thereafter." [1977 ex.s. c 292 § 25.]

Effective dates—1977 ex.s. c 292: See note following RCW 50.04.116.

Effective dates—1973 c 73: See note following RCW 50.04.030.

Emergency—Effective date—1971 c 1: "This 1971 amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect on the Sunday following the day on which the governor signs this enactment [January 17, 1971]." [1971 c 1 § 11.]

Repealer—Effect as to benefits—1971 c 1: "Section 23, chapter 2, Laws of 1970 ex. sess. and RCW 50.20.127 are each hereby repealed. No benefits shall be paid pursuant to RCW 50.20.127 for weeks commencing on or after the effective date of this 1971 amendatory act." [1971 c 1 § 10.]

50.22.130 Training benefits program—Intent. It is the intent of the legislature that a training benefits program be established to provide unemployment insurance benefits to unemployed individuals who participate in training programs necessary for their reemployment.

The legislature further intends that this program serve the following goals:

(1) Retraining should be available for those unemployed individuals whose skills are no longer in demand;

(2) To be eligible for retraining, an individual must have a long-term attachment to the labor force;

(3) Training must enhance the individual's marketable skills and earning power; and

(4) Retraining must be targeted to high-demand occupations.

Individuals unemployed as a result of structural changes in the economy and technological advances rendering their skills obsolete must receive the highest priority for participation in this program. It is the further intent of the legislature that individuals for whom suitable employment is available are not eligible for additional benefits while participating in training.

The legislature further intends that funding for this program be limited by a specified maximum amount each fiscal year. [2009 c 353 § 3; 2000 c 2 § 6.]

Conflict with federal requirements—Severability—Effective date—2000 c 2: See notes following RCW 50.04.355.

50.22.150 Training benefits—Claims effective before April 5, 2009—Eligibility—Definitions—Payment—Local workforce development council to identify high-demand occupations and occupations in declining employer demand—Rules. (1) This section applies to claims with an effective date before April 5, 2009.

(2) Subject to availability of funds, training benefits are available for an individual who is eligible for or has exhausted entitlement to unemployment compensation benefits and who:

(a) Is a dislocated worker as defined in RCW 50.04.075;

(b) Except as provided under subsection (3) of this section, has demonstrated, through a work history, sufficient tenure in an occupation or in work with a particular skill set. This screening will take place during the assessment process;

(c) Is, after assessment of demand for the individual's occupation or skills in the individual's labor market, determined to need job-related training to find suitable employment in his or her labor market. Beginning July 1, 2001, the assessment of demand for the individual's occupation or skill sets must be substantially based on declining occupation or skill sets identified in local labor market areas by the local workforce development councils, in cooperation with the employment security department and its labor market information division, under subsection (11) of this section;

(d) Develops an individual training program that is submitted to the commissioner for approval within sixty days after the individual is notified by the employment security department of the requirements of this section;

(e) Enters the approved training program by ninety days after the date of the notification, unless the employment security department determines that the training is not available during the ninety-day period, in which case the individual enters training as soon as it is available; and

(f) Is enrolled in training approved under this section on a full-time basis as determined by the educational institution, and is making satisfactory progress in the training as certified by the educational institution.

(3) Until June 30, 2002, the following individuals who meet the requirements of subsection (2) of this section may, without regard to the tenure requirements under subsection (2)(b) of this section, receive training benefits as provided in this section:

(a) An exhaustee who has base year employment in the aerospace industry assigned the standard industrial classification code "372" or the North American industry classification system code "336411";

(b) An exhaustee who has base year employment in the forest products industry, determined by the department, but including the industries assigned the major group standard industrial classification codes "24" and "26" or any equivalent codes in the North American industry classification system code, and the industries involved in the harvesting and management of logs, transportation of logs and wood products, processing of wood products, and the manufacturing and distribution of wood processing and logging equipment; or

(c) An exhaustee who has base year employment in the fishing industry assigned the standard industrial classification code "0912" or any equivalent codes in the North American industry classification system code.

(4) An individual is not eligible for training benefits under this section if he or she:

(a) Is a standby claimant who expects recall to his or her regular employer;

(b) Has a definite recall date that is within six months of the date he or she is laid off; or

(c) Is unemployed due to a regular seasonal layoff which demonstrates a pattern of unemployment consistent with the provisions of *RCW 50.20.015. Regular seasonal layoff does not include layoff due to permanent structural downsizing or structural changes in the individual's labor market.

(5) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Educational institution" means an institution of higher education as defined in RCW 28B.10.016 or an educational institution as defined in RCW 28C.04.410, including equivalent educational institutions in other states.

(b) "Sufficient tenure" means earning a plurality of wages in a particular occupation or using a particular skill set

during the base year and at least two of the four twelve-month periods immediately preceding the base year.

(c) "Training benefits" means additional benefits paid under this section.

(d) "Training program" means:

(i) An education program determined to be necessary as a prerequisite to vocational training after counseling at the educational institution in which the individual enrolls under his or her approved training program; or

(ii) A vocational training program at an educational institution:

(A) That is targeted to training for a high-demand occupation. Beginning July 1, 2001, the assessment of high-demand occupations authorized for training under this section must be substantially based on labor market and employment information developed by local workforce development councils, in cooperation with the employment security department and its labor market information division, under subsection (11) of this section;

(B) That is likely to enhance the individual's marketable skills and earning power; and

(C) That meets the criteria for performance developed by the workforce training and education coordinating board for the purpose of determining those training programs eligible for funding under Title I of P.L. 105-220.

"Training program" does not include any course of education primarily intended to meet the requirements of a baccalaureate or higher degree, unless the training meets specific requirements for certification, licensing, or for specific skills necessary for the occupation.

(6) Benefits shall be paid as follows:

(a)(i) Except as provided in (a)(iii) of this subsection, for exhaustees who are eligible under subsection (2) of this section, the total training benefit amount shall be fifty-two times the individual's weekly benefit amount, reduced by the total amount of regular benefits and extended benefits paid, or deemed paid, with respect to the benefit year; or

(ii) For exhaustees who are eligible under subsection (3) of this section, for claims filed before June 30, 2002, the total training benefit amount shall be seventy-four times the individual's weekly benefit amount, reduced by the total amount of regular benefits and extended benefits paid, or deemed paid, with respect to the benefit year; or

(iii) For exhaustees eligible under subsection (2) of this section from industries listed under subsection (3)(a) of this section, for claims filed on or after June 30, 2002, but before January 5, 2003, the total training benefit amount shall be seventy-four times the individual's weekly benefit amount, reduced by the total amount of regular benefits and extended benefits paid, or deemed paid, with respect to the benefit year.

(b) The weekly benefit amount shall be the same as the regular weekly amount payable during the applicable benefit year and shall be paid under the same terms and conditions as regular benefits. The training benefits shall be paid before any extended benefits but not before any similar federally funded program.

(c) Training benefits are not payable for weeks more than two years beyond the end of the benefit year of the regular claim.

(7) The requirement under RCW 50.22.010(10) relating to exhausting regular benefits does not apply to an individual otherwise eligible for training benefits under this section when the individual's benefit year ends before his or her training benefits are exhausted and the individual is eligible for a new benefit year. These individuals will have the option of remaining on the original claim or filing a new claim.

(8)(a) Except as provided in (b) of this subsection, individuals who receive training benefits under this section or under any previous additional benefits program for training are not eligible for training benefits under this section for five years from the last receipt of training benefits under this section or under any previous additional benefits program for training.

(b) With respect to claims that are filed before January 5, 2003, an individual in the aerospace industry assigned the standard industrial code "372" or the North American industry classification system code "336411" who received training benefits under this section, and who had been making satisfactory progress in a training program but did not complete the program, is eligible, without regard to the five-year limitation of this section and without regard to the requirement of subsection (2)(b) of this section, if applicable, to receive training benefits under this section in order to complete that training program. The total training benefit amount that applies to the individual is seventy-four times the individual's weekly benefit amount, reduced by the total amount of regular benefits paid, or deemed paid, with respect to the benefit year in which the training program resumed and, if applicable, reduced by the amount of training benefits paid, or deemed paid, with respect to the benefit year in which the training program commenced.

(9) An individual eligible to receive a trade readjustment allowance under chapter 2 of Title II of the Trade Act of 1974, as amended, shall not be eligible to receive benefits under this section for each week the individual receives such trade readjustment allowance. An individual eligible to receive emergency unemployment compensation, so called, under any federal law, shall not be eligible to receive benefits under this section for each week the individual receives such compensation.

(10) All base year employers are interested parties to the approval of training and the granting of training benefits.

(11) By July 1, 2001, each local workforce development council, in cooperation with the employment security department and its labor market information division, must identify high-demand occupations and occupations in declining employer demand. For the purposes of RCW 50.22.130 through 50.22.150 and section 9, chapter 2, Laws of 2000, "high-demand occupation" means an occupation with a substantial number of current or projected employment opportunities. Local workforce development councils must use state and locally developed labor market information. Thereafter, each local workforce development council shall update this information annually or more frequently if needed.

(12) The commissioner shall adopt rules as necessary to implement this section. [2009 c 353 § 4; 2009 c 3 § 5; 2002 c 149 § 2; 2000 c 2 § 8.]

***Reviser's note:** RCW 50.20.015 was repealed by 2003 2nd sp.s. c 4 § 35.

Short title—Effective date—Conflict with federal requirements—2009 c 3: See notes following RCW 50.20.120.

Effective dates—2002 c 149 §§ 2 and 8: "(1) Section 2 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 26, 2002].

(2) Section 8 of this act takes effect January 1, 2005." [2002 c 149 § 19.]

Conflict with federal requirements—Severability—2002 c 149: See notes following RCW 50.22.140.

Application—2000 c 2 §§ 1, 2, 4, 5, 8, and 12-15: "(1) Sections 1, 2, 4, 5, and 15 of this act apply to rate years beginning on or after January 1, 2000.

(2)(a) Except as provided under (b) of this subsection, sections 8 and 12 through 14 of this act apply beginning with weeks of unemployment that begin on or after the Sunday following the day on which the governor signs chapter 2, Laws of 2000 [February 13, 2000].

(b) For individuals eligible under section 8(2)(a) of this act who are enrolled in a national reserve grant on February 7, 2000, section 8 of this act applies beginning with weeks of unemployment that begin after the termination of their needs-related payments under a national reserve grant." [2000 c 2 § 16.]

Conflict with federal requirements—Severability—Effective date—2000 c 2: See notes following RCW 50.04.355.

50.22.155 Training benefits—Claims effective on or after April 5, 2009—Eligibility—Definitions—Role of local workforce development councils—Rules. (1) This section applies to claims with an effective date on or after April 5, 2009.

(2) Subject to availability of funds, training benefits are available for an individual who is eligible for or has exhausted entitlement to unemployment compensation benefits when:

(a) The individual is a dislocated worker as defined in RCW 50.04.075 and, after assessment of the individual's labor market, occupation, or skills, is determined to need job-related training to find suitable employment in the individual's labor market. The assessment of demand for the individual's occupation or skill sets must be substantially based on declining occupation or skill sets and high-demand occupations identified in local labor market areas by the local workforce development councils in cooperation with the employment security department and its labor market information division; or

(b) For claims with an effective date on or after September 7, 2009, the individual:

(i) Earned an average hourly wage in the individual's base year that is less than one hundred thirty percent of the state minimum wage, and after assessment, it is determined that the individual's earning potential will be enhanced through vocational training. The individual's average hourly wage is calculated by dividing the total wages paid by the total hours worked in the individual's base year;

(ii) Served in the United States military or the Washington national guard during the twelve-month period prior to the application date, was honorably discharged from military service or the Washington national guard and, after assessment, is determined to need job-related training to find suitable employment in the individual's labor market;

(iii) Is currently serving in the Washington national guard and, after assessment, is determined to need job-related training to find suitable employment in the individual's labor market; or

(iv) Is disabled due to an injury or illness and, after assessment, is determined to be unable to return to his or her previous occupation and to need job-related training to find suitable employment in the individual's labor market.

(3)(a) The individual must develop an individual training program that is submitted to the commissioner for approval within ninety days after the individual is notified by the employment security department of the requirements of this section;

(b) The individual must enter the approved training program by one hundred twenty days after the date of the notification, unless the employment security department determines that the training is not available during the one hundred twenty days, in which case the individual enters training as soon as it is available;

(c) The department may waive the deadlines established under this subsection for reasons deemed by the commissioner to be good cause.

(4) The individual must be enrolled in training approved under this section on a full-time basis as determined by the educational institution, except that less than full-time training may be approved when the individual has a physical, mental, or emotional disability that precludes enrollment on a full-time basis.

(5) The individual must make satisfactory progress in the training as defined by the commissioner and certified by the educational institution.

(6) An individual is not eligible for training benefits under this section if he or she:

(a) Is a standby claimant who expects recall to his or her regular employer; or

(b) Has a definite recall date that is within six months of the date he or she is laid off.

(7) The following definitions apply throughout this section unless the context clearly requires otherwise.

(a) "Educational institution" means an institution of higher education as defined in RCW 28B.10.016 or an educational institution as defined in RCW 28C.04.410, including equivalent educational institutions in other states.

(b) "High-demand occupation" means an occupation with a substantial number of current or projected employment opportunities.

(c) "Training benefits" means additional benefits paid under this section.

(d) "Training program" means:

(i) An education program determined to be necessary as a prerequisite to vocational training after counseling at the educational institution in which the individual enrolls under his or her approved training program; or

(ii) A vocational training program at an educational institution that:

(A) Is targeted to training for a high-demand occupation;

(B) Is likely to enhance the individual's marketable skills and earning power; and

(C) Meets the criteria for performance developed by the workforce training and education coordinating board for the purpose of determining those training programs eligible for funding under Title I of P.L. 105-220.

"Training program" does not include any course of education primarily intended to meet the requirements of a baccalaureate or higher degree, unless the training meets specific

requirements for certification, licensing, or for specific skills necessary for the occupation.

(8) Benefits shall be paid as follows:

(a) The total training benefit amount shall be fifty-two times the individual's weekly benefit amount, reduced by the total amount of regular benefits and extended benefits paid, or deemed paid, with respect to the benefit year.

(b) The weekly benefit amount shall be the same as the regular weekly amount payable during the applicable benefit year and shall be paid under the same terms and conditions as regular benefits.

(c) Training benefits shall be paid before any extended benefits but not before any similar federally funded program.

(d) Training benefits are not payable for weeks more than two years beyond the end of the benefit year of the regular claim.

(9) The requirement under RCW 50.22.010(10) relating to exhausting regular benefits does not apply to an individual otherwise eligible for training benefits under this section when the individual's benefit year ends before his or her training benefits are exhausted and the individual is eligible for a new benefit year. These individuals will have the option of remaining on the original claim or filing a new claim.

(10) Individuals who receive training benefits under RCW 50.22.150 or this section are not eligible for training benefits under this section for five years from the last receipt of training benefits.

(11) An individual eligible to receive a trade readjustment allowance under chapter 2, Title II of the trade act of 1974, as amended, shall not be eligible to receive benefits under this section for each week the individual receives such trade readjustment allowance.

(12) An individual eligible to receive emergency unemployment compensation under any federal law shall not be eligible to receive benefits under this section for each week the individual receives such compensation.

(13) All base year employers are interested parties to the approval of training and the granting of training benefits.

(14) Each local workforce development council, in cooperation with the employment security department and its labor market information division, must identify occupations and skill sets that are declining and high-demand occupations and skill sets. Each local workforce development council shall update this information annually or more frequently if needed.

(15) The commissioner shall adopt rules as necessary to implement this section. [2009 c 3 § 4.]

Short title—Effective date—Conflict with federal requirements—2009 c 3: See notes following RCW 50.20.120.

50.22.157 Training benefits program—Annual report. The employment security department shall report to the appropriate committees of the legislature by December 1, 2009, and every year thereafter, on the status of the training benefits program and the resulting outcomes. The department shall include in its report:

(1) A demographic analysis of participants in the training benefits program under this section including the number of claimants per North American industry classification system code and the gender, race, age, and geographic representation of participants;

(2) The duration of training benefits claimed per claimant;

(3) An analysis of the training provided to participants including the occupational category supported by the training, those participants who complete training in relationship to those that do not, and the reasons for noncompletion of approved training programs;

(4) The employment and wage history of participants, including the pretraining and posttraining wage and whether those participating in training return to their previous employer after training terminates; and

(5) An identification and analysis of administrative costs at both the local and state level for administering this program. [2009 c 3 § 6.]

Short title—Effective date—Conflict with federal requirements—2009 c 3: See notes following RCW 50.20.120.

Chapter 50.24 RCW
CONTRIBUTIONS BY EMPLOYERS

Sections

50.24.014 Financing special unemployment assistance—Financing the employment security department's administrative costs—Accounts—Contributions.

50.24.014 Financing special unemployment assistance—Financing the employment security department's administrative costs—Accounts—Contributions. (1)(a) A separate and identifiable account to provide for the financing of special programs to assist the unemployed is established in the administrative contingency fund. All money in this account shall be expended solely for the purposes of this title and for no other purposes whatsoever. Contributions to this account shall accrue and become payable by each employer, except employers as described in RCW 50.44.010 and 50.44.030 who have properly elected to make payments in lieu of contributions, taxable local government employers as described in RCW 50.44.035, and those employers who are required to make payments in lieu of contributions, at a basic rate of two one-hundredths of one percent. The amount of wages subject to tax shall be determined under RCW 50.24.010.

(b) A separate and identifiable account is established in the administrative contingency fund for financing the employment security department's administrative costs under RCW 50.22.150 and 50.22.155 and the costs under RCW 50.22.150(11) and 50.22.155(14). All money in this account shall be expended solely for the purposes of this title and for no other purposes whatsoever. Contributions to this account shall accrue and become payable by each employer, except employers as described in RCW 50.44.010 and 50.44.030 who have properly elected to make payments in lieu of contributions, taxable local government employers as described in RCW 50.44.035, those employers who are required to make payments in lieu of contributions, those employers described under *RCW 50.29.025(1)(f)(ii), and those qualified employers assigned rate class 20 or rate class 40, as applicable, under RCW 50.29.025, at a basic rate of one one-hundredth of one percent. The amount of wages subject to tax shall be determined under RCW 50.24.010. Any amount of contributions payable under this subsection

(1)(b) that exceeds the amount that would have been collected at a rate of four one-thousandths of one percent must be deposited in the account created in (a) of this subsection.

(2)(a) Contributions under this section shall become due and be paid by each employer under rules as the commissioner may prescribe, and shall not be deducted, in whole or in part, from the remuneration of individuals in the employ of the employer. Any deduction in violation of this section is unlawful.

(b) In the payment of any contributions under this section, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent.

(3) If the commissioner determines that federal funding has been increased to provide financing for the services specified in chapter 50.62 RCW, the commissioner shall direct that collection of contributions under this section be terminated on the following January 1st. [2009 c 566 § 2; 2007 c 327 § 2; 2006 c 13 § 20. Prior: 2003 2nd sp.s. c 4 § 25; 2000 c 2 § 15; prior: 1998 c 346 § 901; 1998 c 161 § 7; 1994 c 187 § 3; 1993 c 483 § 20; 1987 c 171 § 4; 1985 ex.s. c 5 § 8.]

***Reviser's note:** RCW 50.29.025 was amended by 2009 c 3 § 14 and by 2009 c 493 § 2, changing the subsection numbering.

Findings—Intent—2009 c 566: "(1) The legislature finds that:

(a) This is a time of great economic difficulty for the residents of Washington state;

(b) Education and training provides opportunity for unemployed workers and economically disadvantaged adults to move into living wage jobs and is of critical importance to the current and future prosperity of the residents of Washington state;

(c) Community and technical college workforce training programs, private career schools and colleges, and Washington state apprenticeship and training council-approved apprenticeship programs provide effective and efficient pathways for people to enter high-demand occupations while also meeting the needs of the economy;

(d) The identification of high-demand occupations needs to be based on reliable labor market research; and

(e) Workforce development councils are in a position to provide funding for economically disadvantaged adults and unemployed workers to access training.

(2) Consistent with the intent of the workforce investment act adult and dislocated worker program provisions of the American recovery and reinvestment act of 2009, the legislature intends that individuals who are eligible for services under the workforce investment act adult and dislocated worker programs, or are receiving or have exhausted entitlement to unemployment compensation benefits be provided the opportunity to enroll in training programs to prepare for a high-demand occupation." [2009 c 566 § 1.]

Effective date—2009 c 566: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 19, 2009]." [2009 c 566 § 8.]

Severability—2007 c 327: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2007 c 327 § 5.]

Conflict with federal requirements—2007 c 327: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [2007 c 327 § 6.]

Effective date—2007 c 327: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2007." [2007 c 327 § 7.]

Retroactive application—2006 c 13 §§ 8-22: See note following RCW 50.04.293.

Conflict with federal requirements—Part headings not law—Severability—2006 c 13: See notes following RCW 50.20.120.

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Application—2000 c 2 §§ 1, 2, 4, 5, 8, and 12-15: See note following RCW 50.22.150.

Conflict with federal requirements—Severability—Effective date—2000 c 2: See notes following RCW 50.04.355.

Construction—1998 c 346: "This act shall not be construed as affecting any right or cause of action asserted in *Washington State Legislature v. State of Washington* (Thurston county superior court cause no. 98-2-00105-1)." [1998 c 346 § 912.]

Severability—1998 c 346: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1998 c 346 § 914.]

Effective date—1998 c 346: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 3, 1998]." [1998 c 346 § 915.]

Finding—Intent—1998 c 161: See note following RCW 50.20.140.

Conflict with federal requirements—1994 c 187: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1994 c 187 § 6.]

Effective dates, applicability—Conflict with federal requirements—Severability—1993 c 483: See notes following RCW 50.04.293.

Conflict with federal requirements—Severability—1987 c 171: See notes following RCW 50.62.010.

Conflict with federal requirements—Severability—1985 ex.s. c 5: See notes following RCW 50.62.010.

Chapter 50.29 RCW
EMPLOYER EXPERIENCE RATING

Sections

50.29.010 Definitions.
50.29.021 Experience rating accounts—Benefits not charged—Claims with an effective date on or after January 4, 2004.
50.29.025 Contribution rates.
50.29.062 Contribution rates for predecessor and successor employers.
50.29.063 Predecessor or successor employers—Transfer to obtain reduced array calculation factor rate—Evasion of successor provisions—Penalties.

50.29.010 Definitions. As used in this chapter:

(1) "Computation date" means July 1st of any year;

(2) "Cut-off date" means September 30th next following the computation date;

(3) "Payroll" means all wages (as defined for contribution purposes) paid by an employer to individuals in his or her employment;

(4) "Qualification date" means April 1st of the second year preceding the computation date;

(5) "Qualified employer" means any employer who (a) reported some employment in the twelve-month period beginning with the qualification date, (b) had no period of four or more consecutive calendar quarters for which he or she reported no employment in the two calendar years imme-

diately preceding the computation date, and (c) has submitted by the cut-off date all reports, contributions, interest, and penalties required under this title for the period preceding the computation date. Unpaid contributions, interest, and penalties must be disregarded for the purposes of this section if they constitute less than either one hundred dollars or one-half of one percent of the employer's total tax reported for the twelve-month period immediately preceding the computation date. Late reports, contributions, penalties, or interest may be disregarded for the purposes of this section if showing is made to the satisfaction of the commissioner, as the commissioner may define by rule, that an otherwise qualified employer acted in good faith and that forfeiture of qualification for a reduced contribution rate because of such delinquency would be inequitable;

(6) "Rate year" means the calendar year immediately following the computation date. [2009 c 83 § 1; 2002 c 149 § 11; 1987 c 213 § 2; 1986 c 111 § 1; 1984 c 205 § 3; 1983 1st ex.s. c 23 § 17; 1973 1st ex.s. c 158 § 11; 1971 c 3 § 16; 1970 ex.s. c 2 § 10.]

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

Conflict with federal requirements—2009 c 83: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [2009 c 83 § 2.]

Conflict with federal requirements—Severability—2002 c 149: See notes following RCW 50.22.140.

Construction—1987 c 213: "This act shall not be construed as affecting any existing right acquired or liability or obligation incurred under the sections amended or repealed in this act, or under any rule, regulation, or order adopted under those sections, nor as affecting any proceeding instituted thereunder." [1987 c 213 § 4.]

Conflict with federal requirements—1986 c 111: "If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1986 c 111 § 2.]

Severability—1986 c 111: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1986 c 111 § 4.]

Conflict with federal requirements—Severability—Effective dates—1984 c 205: See notes following RCW 50.20.120.

Conflict with federal requirements—Effective dates—Construction—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

Effective date—1973 1st ex.s. c 158: See note following RCW 50.08.020.

Construction—Compliance with federal act—1971 c 3: See RCW 50.44.080.

Effective date—1970 ex.s. c 2: See note following RCW 50.04.020.

Wages defined for contribution purposes: RCW 50.04.320.

50.29.021 Experience rating accounts—Benefits not charged—Claims with an effective date on or after January 4, 2004. (1) This section applies to benefits charged to the experience rating accounts of employers for claims that have an effective date on or after January 4, 2004.

(2)(a) An experience rating account shall be established and maintained for each employer, except employers as described in RCW 50.44.010, 50.44.030, and 50.50.030 who have properly elected to make payments in lieu of contributions, taxable local government employers as described in RCW 50.44.035, and those employers who are required to make payments in lieu of contributions, based on existing records of the employment security department.

(b) Benefits paid to an eligible individual shall be charged to the experience rating accounts of each of such individual's employers during the individual's base year in the same ratio that the wages paid by each employer to the individual during the base year bear to the wages paid by all employers to that individual during that base year, except as otherwise provided in this section.

(c) When the eligible individual's separating employer is a covered contribution paying base year employer, benefits paid to the eligible individual shall be charged to the experience rating account of only the individual's separating employer if the individual qualifies for benefits under:

(i) *RCW 50.20.050(1)(b)(i), as applicable, and became unemployed after having worked and earned wages in the bona fide work; or

(ii) *RCW 50.20.050(1)(b) (v) through (x).

(3) The legislature finds that certain benefit payments, in whole or in part, should not be charged to the experience rating accounts of employers except those employers described in RCW 50.44.010, 50.44.030, and 50.50.030 who have properly elected to make payments in lieu of contributions, taxable local government employers described in RCW 50.44.035, and those employers who are required to make payments in lieu of contributions, as follows:

(a) Benefits paid to any individual later determined to be ineligible shall not be charged to the experience rating account of any contribution paying employer. However, when a benefit claim becomes invalid due to an amendment or adjustment of a report where the employer failed to report or inaccurately reported hours worked or remuneration paid, or both, all benefits paid will be charged to the experience rating account of the contribution paying employer or employers that originally filed the incomplete or inaccurate report or reports. An employer who reimburses the trust fund for benefits paid to workers and who fails to report or inaccurately reported hours worked or remuneration paid, or both, shall reimburse the trust fund for all benefits paid that are based on the originally filed incomplete or inaccurate report or reports.

(b) Benefits paid to an individual filing under the provisions of chapter 50.06 RCW shall not be charged to the experience rating account of any contribution paying employer only if:

(i) The individual files under RCW 50.06.020(1) after receiving crime victims' compensation for a disability resulting from a nonwork-related occurrence; or

(ii) The individual files under RCW 50.06.020(2).

(c) Benefits paid which represent the state's share of benefits payable as extended benefits defined under RCW

50.22.010(6) shall not be charged to the experience rating account of any contribution paying employer.

(d) In the case of individuals who requalify for benefits under RCW 50.20.050 or 50.20.060, benefits based on wage credits earned prior to the disqualifying separation shall not be charged to the experience rating account of the contribution paying employer from whom that separation took place.

(e) Benefits paid to an individual who qualifies for benefits under *RCW 50.20.050(1)(b) (iv) or (xi), as applicable, shall not be charged to the experience rating account of any contribution paying employer.

(f) With respect to claims with an effective date on or after the first Sunday following April 22, 2005, benefits paid that exceed the benefits that would have been paid if the weekly benefit amount for the claim had been determined as one percent of the total wages paid in the individual's base year shall not be charged to the experience rating account of any contribution paying employer. This subsection (3)(f) does not apply to the calculation of contribution rates under RCW 50.29.025 for rate year 2010 and thereafter.

(g) The forty-five dollar increase paid as part of an individual's weekly benefit amount as provided in RCW 50.20.1201 shall not be charged to the experience rating account of any contribution paying employer.

(h) With respect to claims where the minimum amount payable weekly is increased to one hundred fifty-five dollars pursuant to RCW 50.20.1201(3), benefits paid that exceed the benefits that would have been paid if the minimum amount payable weekly had been calculated pursuant to RCW 50.20.120 shall not be charged to the experience rating account of any contribution paying employer.

(i) Training benefits paid to an individual under RCW 50.22.155 shall not be charged to the experience rating account of any contribution paying employer.

(4)(a) A contribution paying base year employer, not otherwise eligible for relief of charges for benefits under this section, may receive such relief if the benefit charges result from payment to an individual who:

(i) Last left the employ of such employer voluntarily for reasons not attributable to the employer;

(ii) Was discharged for misconduct or gross misconduct connected with his or her work not a result of inability to meet the minimum job requirements;

(iii) Is unemployed as a result of closure or severe curtailment of operation at the employer's plant, building, worksite, or other facility. This closure must be for reasons directly attributable to a catastrophic occurrence such as fire, flood, or other natural disaster;

(iv) Continues to be employed on a regularly scheduled permanent part-time basis by a base year employer and who at some time during the base year was concurrently employed and subsequently separated from at least one other base year employer. Benefit charge relief ceases when the employment relationship between the employer requesting relief and the claimant is terminated. This subsection does not apply to shared work employers under chapter 50.06 RCW; or

(v) Was hired to replace an employee who is a member of the military reserves or National Guard and was called to federal active military service by the president of the United States and is subsequently laid off when that employee is reemployed by their employer upon release from active duty within the time provided for reemployment in RCW 73.16.035.

(b) The employer requesting relief of charges under this subsection must request relief in writing within thirty days following mailing to the last known address of the notification of the valid initial determination of such claim, stating the date and reason for the separation or the circumstances of continued employment. The commissioner, upon investigation of the request, shall determine whether relief should be granted. [2009 c 493 § 1; 2009 c 50 § 1; 2009 c 3 § 13; 2008 c 323 § 2; 2007 c 146 § 2; 2006 c 13 § 6; 2005 c 133 § 4; 2003 2nd sp.s. c 4 § 21.]

Reviser's note: *(1) RCW 50.20.050 was amended during the 2009 legislative session, changing the subsection numbering.

(2) This section was amended by 2009 c 3 § 13, 2009 c 50 § 1, and by 2009 c 493 § 1, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Conflict with federal requirements—2009 c 493: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [2009 c 493 § 5.]

Short title—Effective date—Conflict with federal requirements—2009 c 3: See notes following RCW 50.20.120.

Conflict with federal requirements—2008 c 323: See note following RCW 50.20.050.

Conflict with federal requirements—Severability—2007 c 146: See notes following RCW 50.04.080.

Conflict with federal requirements—Part headings not law—Severability—2006 c 13: See notes following RCW 50.20.120.

Findings—Intent—Conflict with federal requirements—Effective date—2005 c 133: See notes following RCW 50.20.120.

Additional employees authorized—2005 c 133: See note following RCW 50.01.010.

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

50.29.025 Contribution rates. (1) For contributions assessed for rate years 2005 through 2009, the contribution rate for each employer subject to contributions under RCW 50.24.010 shall be the sum of the array calculation factor rate and the graduated social cost factor rate determined under this subsection, and the solvency surcharge determined under RCW 50.29.041, if any.

(a) The array calculation factor rate shall be determined as follows:

(i) An array shall be prepared, listing all qualified employers in ascending order of their benefit ratios. The array shall show for each qualified employer: (A) Identification number; (B) benefit ratio; and (C) taxable payrolls for the four consecutive calendar quarters immediately preceding the computation date and reported to the employment security department by the cut-off date.

(ii) Each employer in the array shall be assigned to one of forty rate classes according to his or her benefit ratio as follows, and, except as provided in RCW 50.29.026, the array calculation factor rate for each employer in the array shall be

the rate specified in the rate class to which the employer has been assigned:

Benefit Ratio		Rate Class	Rate (percent)
At least	Less than		
	0.000001	1	0.00
0.000001	0.001250	2	0.13
0.001250	0.002500	3	0.25
0.002500	0.003750	4	0.38
0.003750	0.005000	5	0.50
0.005000	0.006250	6	0.63
0.006250	0.007500	7	0.75
0.007500	0.008750	8	0.88
0.008750	0.010000	9	1.00
0.010000	0.011250	10	1.15
0.011250	0.012500	11	1.30
0.012500	0.013750	12	1.45
0.013750	0.015000	13	1.60
0.015000	0.016250	14	1.75
0.016250	0.017500	15	1.90
0.017500	0.018750	16	2.05
0.018750	0.020000	17	2.20
0.020000	0.021250	18	2.35
0.021250	0.022500	19	2.50
0.022500	0.023750	20	2.65
0.023750	0.025000	21	2.80
0.025000	0.026250	22	2.95
0.026250	0.027500	23	3.10
0.027500	0.028750	24	3.25
0.028750	0.030000	25	3.40
0.030000	0.031250	26	3.55
0.031250	0.032500	27	3.70
0.032500	0.033750	28	3.85
0.033750	0.035000	29	4.00
0.035000	0.036250	30	4.15
0.036250	0.037500	31	4.30
0.037500	0.040000	32	4.45
0.040000	0.042500	33	4.60
0.042500	0.045000	34	4.75
0.045000	0.047500	35	4.90
0.047500	0.050000	36	5.05
0.050000	0.052500	37	5.20
0.052500	0.055000	38	5.30
0.055000	0.057500	39	5.35
0.057500		40	5.40

(b) The graduated social cost factor rate shall be determined as follows:

(i)(A) Except as provided in (b)(i)(B) and (C) of this subsection, the commissioner shall calculate the flat social cost factor for a rate year by dividing the total social cost by the total taxable payroll. The division shall be carried to the second decimal place with the remaining fraction disregarded unless it amounts to five hundredths or more, in which case the second decimal place shall be rounded to the next higher digit. The flat social cost factor shall be expressed as a percentage.

(B) If, on the cut-off date, the balance in the unemployment compensation fund is determined by the commissioner to be an amount that will provide more than ten months of unemployment benefits, the commissioner shall calculate the flat social cost factor for the rate year immediately following the cut-off date by reducing the total social cost by the dollar amount that represents the number of months for which the balance in the unemployment compensation fund on the cut-off date will provide benefits above ten months and dividing the result by the total taxable payroll. However, the calculation under this subsection (1)(b)(i)(B) for a rate year may not result in a flat social cost factor that is more than four-tenths lower than the calculation under (b)(i)(A) of this subsection for that rate year.

For the purposes of this subsection, the commissioner shall determine the number of months of unemployment benefits in the unemployment compensation fund using the benefit cost rate for the average of the three highest calendar benefit cost rates in the twenty consecutive completed calendar years immediately preceding the cut-off date or a period of consecutive calendar years immediately preceding the cut-off date that includes three recessions, if longer.

(C) The minimum flat social cost factor calculated under this subsection (1)(b) shall be six-tenths of one percent, except that if the balance in the unemployment compensation fund is determined by the commissioner to be an amount that will provide:

(I) At least twelve months but less than fourteen months of unemployment benefits, the minimum shall be five-tenths of one percent; or

(II) At least fourteen months of unemployment benefits, the minimum shall be five-tenths of one percent, except that, for employers in rate class 1, the minimum shall be forty-five hundredths of one percent.

(ii)(A) Except as provided in (b)(ii)(B) of this subsection, the graduated social cost factor rate for each employer in the array is the flat social cost factor multiplied by the percentage specified as follows for the rate class to which the employer has been assigned in (a)(ii) of this subsection, except that the sum of an employer's array calculation factor rate and the graduated social cost factor rate may not exceed six and five-tenths percent or, for employers whose North American industry classification system code is within "111," "112," "1141," "115," "3114," "3117," "42448," or "49312," may not exceed six percent through rate year 2007 and may not exceed five and seven-tenths percent for rate years 2008 and 2009:

(I) Rate class 1 - 78 percent;
(II) Rate class 2 - 82 percent;
(III) Rate class 3 - 86 percent;
(IV) Rate class 4 - 90 percent;
(V) Rate class 5 - 94 percent;
(VI) Rate class 6 - 98 percent;
(VII) Rate class 7 - 102 percent;
(VIII) Rate class 8 - 106 percent;

(IX) Rate class 9 - 110 percent;

(X) Rate class 10 - 114 percent;

(XI) Rate class 11 - 118 percent; and

(XII) Rate classes 12 through 40 - 120 percent.

(B) For contributions assessed beginning July 1, 2005, through December 31, 2007, for employers whose North American industry classification system code is "111," "112," "1141," "115," "3114," "3117," "42448," or "49312," the graduated social cost factor rate is zero.

(iii) For the purposes of this section:

(A) "Total social cost" means the amount calculated by subtracting the array calculation factor contributions paid by all employers with respect to the four consecutive calendar quarters immediately preceding the computation date and paid to the employment security department by the cut-off date from the total unemployment benefits paid to claimants in the same four consecutive calendar quarters. To calculate the flat social cost factor for rate year 2005, the commissioner shall calculate the total social cost using the array calculation factor contributions that would have been required to be paid by all employers in the calculation period if (a) of this subsection had been in effect for the relevant period. To calculate the flat social cost factor for rate years 2010 and 2011, the forty-five dollar increase paid as part of an individual's weekly benefit amount as provided in RCW 50.20.1201 shall not be considered for purposes of calculating the total unemployment benefits paid to claimants in the four consecutive calendar quarters immediately preceding the computation date.

(B) "Total taxable payroll" means the total amount of wages subject to tax, as determined under RCW 50.24.010, for all employers in the four consecutive calendar quarters immediately preceding the computation date and reported to the employment security department by the cut-off date.

(c) For employers who do not meet the definition of "qualified employer" by reason of failure to pay contributions when due:

(i) The array calculation factor rate shall be two-tenths higher than that in rate class 40, except employers who have an approved agency-deferred payment contract by September 30th of the previous rate year. If any employer with an approved agency-deferred payment contract fails to make any one of the succeeding deferred payments or fails to submit any succeeding tax report and payment in a timely manner, the employer's tax rate shall immediately revert to an array calculation factor rate two-tenths higher than that in rate class 40; and

(ii) The social cost factor rate shall be the social cost factor rate assigned to rate class 40 under (b)(ii) of this subsection.

(d) For all other employers not qualified to be in the array:

(i) For rate years 2005, 2006, and 2007:

(A) The array calculation factor rate shall be a rate equal to the average industry array calculation factor rate as determined by the commissioner, plus fifteen percent of that amount; however, the rate may not be less than one percent or more than the array calculation factor rate in rate class 40; and

(B) The social cost factor rate shall be a rate equal to the average industry social cost factor rate as determined by the commissioner, plus fifteen percent of that amount, but not more than the social cost factor rate assigned to rate class 40 under (b)(ii) of this subsection.

(ii) For contributions assessed for rate years 2008 and 2009:

(A) The array calculation factor rate shall be a rate equal to the average industry array calculation factor rate as determined by the commissioner, multiplied by the history factor, but not less than one percent or more than the array calculation factor rate in rate class 40;

(B) The social cost factor rate shall be a rate equal to the average industry social cost factor rate as determined by the commissioner, multiplied by the history factor, but not more than the social cost factor rate assigned to rate class 40 under (b)(ii) of this subsection; and

(C) The history factor shall be based on the total amounts of benefits charged and contributions paid in the three fiscal years ending prior to the computation date by employers not qualified to be in the array, other than employers in (c) of this subsection, who were first subject to contributions in the calendar year ending three years prior to the computation date. The commissioner shall calculate the history ratio by dividing the total amount of benefits charged by the total amount of contributions paid in this three-year period by these employers. The division shall be carried to the second decimal place with the remaining fraction disregarded unless it amounts to five one-hundredths or more, in which case the second decimal place shall be rounded to the next higher digit. The commissioner shall determine the history factor according to the history ratio as follows:

	History Ratio		History Factor (percent)
	At least	Less than	
(I)		.95	90
(II)	.95	1.05	100
(III)	1.05		115

(2) For contributions assessed in rate year 2010 and thereafter, the contribution rate for each employer subject to contributions under RCW 50.24.010 shall be the sum of the array calculation factor rate and the graduated social cost factor rate determined under this subsection, and the solvency surcharge determined under RCW 50.29.041, if any.

(a) The array calculation factor rate shall be determined as follows:

(i) An array shall be prepared, listing all qualified employers in ascending order of their benefit ratios. The array shall show for each qualified employer: (A) Identification number; (B) benefit ratio; and (C) taxable payrolls for the four consecutive calendar quarters immediately preceding the computation date and reported to the employment security department by the cut-off date.

(ii) Each employer in the array shall be assigned to one of forty rate classes according to his or her benefit ratio as follows, and, except as provided in RCW 50.29.026, the array calculation factor rate for each employer in the array shall be the rate specified in the rate class to which the employer has been assigned:

Benefit Ratio		Rate Class	Rate (percent)
At least	Less than		
	0.000001	1	0.00
0.000001	0.001250	2	0.11
0.001250	0.002500	3	0.22
0.002500	0.003750	4	0.33
0.003750	0.005000	5	0.43
0.005000	0.006250	6	0.54
0.006250	0.007500	7	0.65
0.007500	0.008750	8	0.76
0.008750	0.010000	9	0.88
0.010000	0.011250	10	1.01
0.011250	0.012500	11	1.14
0.012500	0.013750	12	1.28
0.013750	0.015000	13	1.41
0.015000	0.016250	14	1.54
0.016250	0.017500	15	1.67
0.017500	0.018750	16	1.80
0.018750	0.020000	17	1.94
0.020000	0.021250	18	2.07
0.021250	0.022500	19	2.20
0.022500	0.023750	20	2.38
0.023750	0.025000	21	2.50
0.025000	0.026250	22	2.63
0.026250	0.027500	23	2.75
0.027500	0.028750	24	2.88
0.028750	0.030000	25	3.00
0.030000	0.031250	26	3.13
0.031250	0.032500	27	3.25
0.032500	0.033750	28	3.38
0.033750	0.035000	29	3.50
0.035000	0.036250	30	3.63
0.036250	0.037500	31	3.75
0.037500	0.040000	32	4.00
0.040000	0.042500	33	4.25
0.042500	0.045000	34	4.50
0.045000	0.047500	35	4.75
0.047500	0.050000	36	5.00
0.050000	0.052500	37	5.15
0.052500	0.055000	38	5.25
0.055000	0.057500	39	5.30
0.057500		40	5.40

(b) The graduated social cost factor rate shall be determined as follows:

(i)(A) Except as provided in (b)(i)(B) and (C) of this subsection, the commissioner shall calculate the flat social cost factor for a rate year by dividing the total social cost by the total taxable payroll. The division shall be carried to the second decimal place with the remaining fraction disregarded unless it amounts to five hundredths or more, in which case the second decimal place shall be rounded to the next higher digit. The flat social cost factor shall be expressed as a percentage.

(B) If, on the cut-off date, the balance in the unemployment compensation fund is determined by the commissioner to be an amount that will provide more than ten months of unemployment benefits, the commissioner shall calculate the flat social cost factor for the rate year immediately following the cut-off date by reducing the total social cost by the dollar amount that represents the number of months for which the balance in the unemployment compensation fund on the cut-off date will provide benefits above ten months and dividing the result by the total taxable payroll. However, the calculation under this subsection (2)(b)(i)(B) for a rate year may not result in a flat social cost factor that is more than four-tenths lower than the calculation under (b)(i)(A) of this subsection for that rate year.

For the purposes of this subsection, the commissioner shall determine the number of months of unemployment benefits in the unemployment compensation fund using the benefit cost rate for the average of the three highest calendar benefit cost rates in the twenty consecutive completed calendar years immediately preceding the cut-off date or a period of consecutive calendar years immediately preceding the cut-off date that includes three recessions, if longer.

(C) The minimum flat social cost factor calculated under this subsection (2)(b) shall be six-tenths of one percent, except that if the balance in the unemployment compensation fund is determined by the commissioner to be an amount that will provide:

(I) At least ten months but less than eleven months of unemployment benefits, the minimum shall be five-tenths of one percent; or

(II) At least eleven months but less than twelve months of unemployment benefits, the minimum shall be forty-five hundredths of one percent; or

(III) At least twelve months but less than thirteen months of unemployment benefits, the minimum shall be four-tenths of one percent; or

(IV) At least thirteen months but less than fifteen months of unemployment benefits, the minimum shall be thirty-five hundredths of one percent; or

(V) At least fifteen months but less than seventeen months of unemployment benefits, the minimum shall be twenty-five hundredths of one percent; or

(VI) At least seventeen months but less than eighteen months of unemployment benefits, the minimum shall be fifteen hundredths of one percent; or

(VII) At least eighteen months of unemployment benefits, the minimum shall be fifteen hundredths of one percent through rate year 2011 and shall be zero thereafter.

(ii) The graduated social cost factor rate for each employer in the array is the flat social cost factor multiplied by the percentage specified as follows for the rate class to which the employer has been assigned in (a)(ii) of this subsection, except that the sum of an employer's array calculation factor rate and the graduated social cost factor rate may not exceed six percent or, for employers whose North American industry classification system code is within "111," "112," "1141," "115," "3114," "3117," "42448," or "49312," may not exceed five and four-tenths percent:

(A) Rate class 1 - 78 percent;
(B) Rate class 2 - 82 percent;
(C) Rate class 3 - 86 percent;
(D) Rate class 4 - 90 percent;
(E) Rate class 5 - 94 percent;
(F) Rate class 6 - 98 percent;
(G) Rate class 7 - 102 percent;
(H) Rate class 8 - 106 percent;
(I) Rate class 9 - 110 percent;
(J) Rate class 10 - 114 percent;
(K) Rate class 11 - 118 percent; and
(L) Rate classes 12 through 40 - 120 percent.

(iii) For the purposes of this section:

(A) "Total social cost" means the amount calculated by subtracting the array calculation factor contributions paid by all employers with respect to the four consecutive calendar quarters immediately preceding the computation date and paid to the employment security department by the cut-off date from the total unemployment benefits paid to claimants in the same four consecutive calendar quarters.

(B) "Total taxable payroll" means the total amount of wages subject to tax, as determined under RCW 50.24.010, for all employers in the four consecutive calendar quarters immediately preceding the computation date and reported to the employment security department by the cut-off date.

(c) For employers who do not meet the definition of "qualified employer" by reason of failure to pay contributions when due:

(i) The array calculation factor rate shall be two-tenths higher than that in rate class 40, except employers who have an approved agency-deferred payment contract by September 30th of the previous rate year. If any employer with an approved agency-deferred payment contract fails to make any one of the succeeding deferred payments or fails to submit any succeeding tax report and payment in a timely manner, the employer's tax rate shall immediately revert to an array calculation factor rate two-tenths higher than that in rate class 40; and

(ii) The social cost factor rate shall be the social cost factor rate assigned to rate class 40 under (b)(ii) of this subsection.

(d) For all other employers not qualified to be in the array:

(i) The array calculation factor rate shall be a rate equal to the average industry array calculation factor rate as determined by the commissioner, multiplied by the history factor, but not less than one percent or more than the array calculation factor rate in rate class 40;

(ii) The social cost factor rate shall be a rate equal to the average industry social cost factor rate as determined by the commissioner, multiplied by the history factor, but not more than the social cost factor rate assigned to rate class 40 under (b)(ii) of this subsection; and

(iii) The history factor shall be based on the total amounts of benefits charged and contributions paid in the three fiscal years ending prior to the computation date by employers not qualified to be in the array, other than employers in (c) of this subsection, who were first subject to contributions in the calendar year ending three years prior to the computation date. The commissioner shall calculate the history ratio by dividing the total amount of benefits charged by the total amount of contributions paid in this three-year period by these employers. The division shall be carried to the second decimal place with the remaining fraction disregarded unless it amounts to five one-hundredths or more, in which case the second decimal place shall be rounded to the next higher digit. The commissioner shall determine the history factor according to the history ratio as follows:

	History Ratio		History Factor (percent)
	At least	Less than	
(A)		.95	90
(B)	.95	1.05	100
(C)	1.05		115

(3) Assignment of employers by the commissioner to industrial classification, for purposes of this section, shall be in accordance with established classification practices found in the North American industry classification system code. [2009 c 493 § 2; 2009 c 3 § 14; 2007 c 51 § 1; 2006 c 13 § 4; 2005 c 133 § 5; 2003 2nd sp.s. c 4 § 14; 2003 c 4 § 1; 2000 c 2 § 4; 1995 c 4 § 2; (1995 c 4 § 1 expired January 1, 1998). Prior: 1993 c 483 § 21; 1993 c 226 § 14; 1993 c 226 § 13; 1990 c 245 § 7; 1989 c 380 § 79; 1987 c 171 § 3; 1985 ex.s. c 5 § 7; 1984 c 205 § 5.]

Reviser's note: This section was amended by 2009 c 3 § 14 and by 2009 c 493 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Conflict with federal requirements—2009 c 493: See note following RCW 50.29.021.

Short title—Effective date—Conflict with federal requirements—2009 c 3: See notes following RCW 50.20.120.

Conflict with federal requirements—2007 c 51: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [2007 c 51 § 2.]

Severability—2007 c 51: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2007 c 51 § 3.]

Application—2007 c 51: "This act applies for rate years beginning on or after January 1, 2008." [2007 c 51 § 4.]

Application—2006 c 13 §§ 4 and 5: "Sections 4 and 5 of this act apply to rate years beginning on or after January 1, 2007." [2006 c 13 § 26.]

Conflict with federal requirements—Part headings not law—Severability—2006 c 13: See notes following RCW 50.20.120.

Findings—Intent—Conflict with federal requirements—Effective date—2005 c 133: See notes following RCW 50.20.120.

Additional employees authorized—2005 c 133: See note following RCW 50.01.010.

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Application—2003 c 4 § 1: "Section 1 of this act applies to rate years beginning on or after January 1, 2003." [2003 c 4 § 2.]

Effective date—2003 c 4: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state gov-

ernment and its existing public institutions, and takes effect immediately [March 12, 2003]." [2003 c 4 § 3.]

Application—2000 c 2 §§ 1, 2, 4, 5, 8, and 12-15: See note following RCW 50.22.150.

Conflict with federal requirements—Severability—Effective date—2000 c 2: See notes following RCW 50.04.355.

Effective dates—1995 c 4: "(1) Section 1 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 16, 1995].

(2) Section 2 of this act shall take effect January 1, 1998." [1995 c 4 § 4.]

Expiration date—1995 c 4 § 1: "Section 1 of this act shall expire January 1, 1998." [1995 c 4 § 5.]

Effective dates, applicability—Conflict with federal requirements—Severability—1993 c 483: See notes following RCW 50.04.293.

Elevation of employer contribution rates—Report by commissioner—1993 c 226: "Prior to any increase in the employer tax schedule as provided in section 13, chapter 226, Laws of 1993, the commissioner shall provide a report to the appropriate committees of the legislature specifying to what extent the workforce training expenditures in chapter 226, Laws of 1993 elevated employer contribution rates for the effective tax schedule." [1993 c 226 § 16.]

Effective dates—1993 c 226 §§ 10, 12, and 14: See note following RCW 50.16.010.

Conflict with federal requirements—Severability—Application—1993 c 226: See notes following RCW 50.16.010.

Conflict with federal requirements—Effective dates—1990 c 245: See notes following RCW 50.04.030.

Effective date—1989 c 380 §§ 78-81: See note following RCW 50.04.150.

Conflict with federal requirements—1989 c 380: See note following RCW 50.04.150.

Severability—1989 c 380: See RCW 15.58.942.

Conflict with federal requirements—Severability—1987 c 171: See notes following RCW 50.62.010.

Conflict with federal requirements—Severability—1985 ex.s. c 5: See notes following RCW 50.62.010.

Conflict with federal requirements—Severability—Effective dates—1984 c 205: See notes following RCW 50.20.120.

50.29.062 Contribution rates for predecessor and successor employers. Except as provided in RCW 50.29.063, predecessor and successor employer contribution rates shall be computed in the following manner:

(1) If the successor is an employer, as defined in RCW 50.04.080, at the time of the transfer of a business, the following applies:

(a) The successor's contribution rate shall remain unchanged for the remainder of the rate year in which the transfer occurs; and

(b) Beginning January 1st following the transfer, the successor's contribution rate for each rate year shall be based on a combination of the following:

(i) The successor's experience with payrolls and benefits; and

(ii) Any experience assigned to the predecessor involved in the transfer. If only a portion of the business was transferred, then the experience attributable to the acquired portion is assigned to the successor.

(2) If the successor is not an employer at the time of the transfer, the following applies:

(a) For transfers before January 1, 2005:

(i) Except as provided in (ii) of this subsection (2)(a), the successor shall pay contributions at the lowest rate determined under either of the following:

(A) The contribution rate of the rate class assigned to the predecessor employer at the time of the transfer for the remainder of that rate year. Any experience relating to the assignment of that rate class attributable to the predecessor is transferred to the successor. Beginning with the January 1st following the transfer, the successor's contribution rate shall be based on a combination of the transferred experience of the acquired business and the successor's experience after the transfer; or

(B) The contribution rate equal to the average industry rate as determined by the commissioner, but not less than one percent, and continuing until the successor qualifies for a different rate in its own right. Assignment of employers by the commissioner to industrial classification, for purposes of this subsection, must be in accordance with established classification practices found in the North American industry classification system issued by the federal office of management and budget to the fourth digit provided in the North American industry classification system.

(ii) If the successor simultaneously acquires the business or a portion of the business of two or more employers in different rate classes, its rate, from the date the transfer occurred until the end of that rate year and until it qualifies in its own right for a new rate, shall be the rate of the highest rate class applicable at the time of the acquisition to any predecessor employer who is a party to the acquisition, but not less than one percent.

(b) For transfers on or after January 1, 2005:

(i) Except as provided in (ii) and (iii) of this subsection (2)(b), the successor shall pay contributions:

(A) At the contribution rate assigned to the predecessor employer at the time of the transfer for the remainder of that rate year. Any experience attributable to the predecessor relating to the assignment of the predecessor's rate class is transferred to the successor.

(B) Beginning January 1st following the transfer, the successor's contribution rate for each rate year shall be based on an array calculation factor rate that is a combination of the following: The successor's experience with payrolls and benefits; and any experience assigned to the predecessor involved in the transfer. If only a portion of the business was transferred, then the experience attributable to the acquired portion is assigned to the successor if qualified under RCW 50.29.010(6) by including the transferred experience. If not qualified under RCW 50.29.010(6), the contribution rate shall equal the sum of the rates determined by the commissioner under *RCW 50.29.025(2)(d)(ii) and 50.29.041, if applicable, and continuing until the successor qualifies for a different rate, including the transferred experience.

(ii) If there is a substantial continuity of ownership, control, or management by the successor of the business of the predecessor, the successor shall pay contributions at the contribution rate determined for the predecessor employer at the time of the transfer for the remainder of that rate year. Any experience attributable to the predecessor relating to the assignment of the predecessor's rate class is transferred to the successor. Beginning January 1st following the transfer, the successor's array calculation factor rate shall be based on a

combination of the transferred experience of the acquired business and the successor's experience after the transfer.

(iii) If the successor simultaneously acquires the business or a portion of the business of two or more employers with different contribution rates, the successor's rate, from the date the transfer occurred until the end of that rate year and until it qualifies in its own right for a new rate, shall be the sum of the rates determined by the commissioner under *RCW 50.29.025(2) (a) and (b), and 50.29.041, applicable at the time of the acquisition, to the predecessor employer who, among the parties to the acquisition, had the largest total payroll in the completed calendar quarter immediately preceding the date of transfer, but not less than the sum of the rates determined by the commissioner under *RCW 50.29.025(2)(d)(ii) and 50.29.041, if applicable.

(3) With respect to predecessor employers:

(a) The contribution rate on any payroll retained by a predecessor employer shall remain unchanged for the remainder of the rate year in which the transfer occurs.

(b) In all cases, beginning January 1st following the transfer, the predecessor's contribution rate or the predecessor's array calculation factor for each rate year shall be based on its experience with payrolls and benefits as of the regular computation date for that rate year excluding the experience of the transferred business or transferred portion of business as that experience has transferred to the successor: PROVIDED, That if all of the predecessor's business is transferred to a successor or successors, the predecessor shall not be a qualified employer until it satisfies the requirements of a "qualified employer" as set forth in RCW 50.29.010.

(4) For purposes of this section, "transfer of a business" means the same as RCW 50.29.063(4)(c). [2009 c 225 § 1; 2006 c 47 § 2; 2003 2nd sp.s. c 4 § 18; 1996 c 238 § 1; 1995 c 56 § 1; 1989 c 380 § 81; 1984 c 205 § 6.]

***Reviser's note:** RCW 50.29.025 was amended by 2009 c 3 § 14 and by 2009 c 493 § 2, changing the subsection numbering.

Conflict with federal requirements—2009 c 225: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [2009 c 225 § 3.]

Conflict with federal requirements—2006 c 47: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [2006 c 47 § 5.]

Severability—2006 c 47: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2006 c 47 § 6.]

Effective date—2006 c 47: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 14, 2006]." [2006 c 47 § 7.]

Retroactive application—2006 c 47: "This act is remedial in nature and shall be applied retroactively to January 1, 2006." [2006 c 47 § 8.]

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Application—1996 c 238: "This act applies to unemployment contribution rates effective on and after January 1, 1996." [1996 c 238 § 2.]

Conflict with federal requirements—1996 c 238: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1996 c 238 § 3.]

Effective date—1989 c 380 §§ 78-81: See note following RCW 50.04.150.

Conflict with federal requirements—1989 c 380: See note following RCW 50.04.150.

Severability—1989 c 380: See RCW 15.58.942.

Conflict with federal requirements—Severability—Effective dates—1984 c 205: See notes following RCW 50.20.120.

50.29.063 Predecessor or successor employers—Transfer to obtain reduced array calculation factor rate—Evasion of successor provisions—Penalties. (1) If it is found that a significant purpose of the transfer of a business was to obtain a reduced array calculation factor rate, then the following applies:

(a) If the successor was an employer at the time of the transfer, then the experience rating accounts of the employers involved shall be combined into a single account and the employers assigned the higher of the predecessor or successor array calculation factor rate to take effect as of the date of the transfer.

(b) If the successor was not an employer at the time of the transfer, then the experience rating account of the acquired business must not be transferred and, instead, the sum of the rate determined by the commissioner under *RCW 50.29.025(2)(d)(ii) and 50.29.041, if applicable, shall be assigned.

(2) If any part of a delinquency for which an assessment is made under this title is due to an intent to knowingly evade the successorship provisions of RCW 50.29.062 and this section, then with respect to the employer, and to any business found to be knowingly promoting the evasion of such provisions:

(a) The commissioner shall, for the rate year in which the commissioner makes the determination under this subsection and for each of the three consecutive rate years following that rate year, assign to the employer or business the total rate, which is the sum of the recalculated array calculation factor rate and a civil penalty assessment rate, calculated as follows:

(i) Recalculate the array calculation factor rate as the array calculation factor rate that should have applied to the employer or business under RCW 50.29.025 and 50.29.062; and

(ii) Calculate a civil penalty assessment rate in an amount that, when added to the array calculation factor rate determined under (a)(i) of this subsection for the applicable rate year, results in a total rate equal to the maximum array calculation factor rate under RCW 50.29.025 plus two per-

cent, which total rate is not limited by any maximum array calculation factor rate established in *RCW 50.29.025(2)(b)(ii);

(b) The employer or business may be prosecuted under the penalties prescribed in RCW 50.36.020; and

(c) The employer or business must pay for the employment security department's reasonable expenses of auditing the employer's or business's books and collecting the civil penalty assessment.

(3) If the person knowingly evading the successorship provisions, or knowingly attempting to evade these provisions, or knowingly promoting the evasion of these provisions, is not an employer, the person is subject to a civil penalty assessment of five thousand dollars per occurrence. In addition, the person is subject to the penalties prescribed in RCW 50.36.020 as if the person were an employer. The person must also pay for the employment security department's reasonable expenses of auditing his or her books and collecting the civil penalty assessment.

(4) For purposes of this section:

(a) "Knowingly" means having actual knowledge of or acting with deliberate ignorance or reckless disregard for the prohibition involved and includes, but is not limited to, intent to evade, misrepresentation, or willful nondisclosure.

(b) "Person" means and includes an individual, a trust, estate, partnership, association, company, or corporation.

(c) "Transfer of a business" includes the transfer or acquisition of substantially all or a portion of the operating assets, which may include the employer's workforce.

(5) Any decision to assess a penalty under this section shall be made by the chief administrative officer of the tax branch or his or her designee.

(6) Nothing in this section shall be construed to deny an employer the right to appeal the assessment of a penalty in the manner provided in RCW 50.32.030.

(7) The commissioner shall engage in prevention, detection, and collection activities related to evasion of the successorship provisions of RCW 50.29.062 and this section, and establish procedures to enforce this section. [2009 c 225 § 2; 2007 c 327 § 3; 2006 c 47 § 1.]

***Reviser's note:** RCW 50.29.025 was amended by 2009 c 3 § 14 and by 2009 c 493 § 2, changing the subsection numbering.

Conflict with federal requirements—2009 c 225: See note following RCW 50.29.062.

Severability—Conflict with federal requirements—Effective date—2007 c 327: See notes following RCW 50.24.014.

Conflict with federal requirements—Severability—Effective date—Retroactive application—2006 c 47: See notes following RCW 50.29.062.

Chapter 50.38 RCW

LABOR MARKET INFORMATION AND ECONOMIC ANALYSIS

Sections

50.38.050 Department—Duties.

50.38.050 Department—Duties. The department shall have the following duties:

(1) Oversight and management of a statewide comprehensive labor market and occupational supply and demand information system, including development of a five-year employment forecast for state and labor market areas;

(2) Produce local labor market information packages for the state's counties, including special studies and job impact analyses in support of state and local employment, training, education, and job creation programs, especially activities that prevent job loss, reduce unemployment, and create jobs;

(3) Coordinate with the office of financial management and the office of the forecast council to improve employment estimates by enhancing data on corporate officers, improving business establishment listings, expanding sample for employment estimates, and developing business entry/exit analysis relevant to the generation of occupational and economic forecasts;

(4) In cooperation with the office of financial management, produce long-term industry and occupational employment forecasts. These forecasts shall be consistent with the official economic and revenue forecast council biennial economic and revenue forecasts; and

(5) Analyze labor market and economic data, including the use of input-output models, for the purpose of identifying industry clusters and strategic industry clusters that meet the criteria identified by the working group convened by the economic development commission and the workforce training and education coordinating board under chapter 43.330 RCW. [2009 c 151 § 2; 1993 c 62 § 5.]

Chapter 50.60 RCW

SHARED WORK COMPENSATION PLANS—BENEFITS

Sections

50.60.020 Definitions.
50.60.030 Compensation plan—Criteria for approval.
50.60.060 Approved plan—Effective date—Expiration.
50.60.070 Approved plan—Revocation—Review of plans.
50.60.090 Shared work benefits—Eligibility.
50.60.100 Benefits—Weekly amount—Maximum entitlement—Claims—Conditions.

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

(1) "Affected employee" means a specified employee, to which an approved shared work compensation plan applies.

(2) "Employers' association" means an association which is a party to a collective bargaining agreement under which there is a shared work compensation plan.

(3) "Fringe benefits" include health insurance, retirement benefits under benefit pension plans as defined in section 3(35) of the employee retirement income security act of 1974, paid vacation and holidays, and sick leave, which are incidents of employment in addition to cash remuneration.

(4) "Shared work benefits" means the benefits payable to an affected employee under an approved shared work compensation plan as distinguished from the benefits otherwise payable under this title.

(5) "Shared work compensation plan" means a plan of an employer, or of an employers' association, under which there is a reduction in the number of hours worked by employees rather than temporary layoffs.

(6) "Shared work employer" means an employer, one or more of whose employees are covered by a shared work compensation plan.

(7) "Unemployment compensation" means the benefits payable under this title other than shared work benefits and includes any amounts payable pursuant to an agreement under federal law providing for compensation, assistance, or allowances with respect to unemployment.

(8) "Usual weekly hours of work" means the normal number of hours of work for the affected employee when he or she is working on a full-time basis, not to exceed forty hours and not including overtime. [2009 c 3 § 7; 1983 c 207 § 2.]

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

Short title—Effective date—Conflict with federal requirements—2009 c 3: See notes following RCW 50.20.120.

50.60.030 Compensation plan—Criteria for approval. An employer or employers' association wishing to participate in a shared work compensation program shall submit a written and signed shared work compensation plan to the commissioner for approval. The commissioner shall approve a shared work compensation plan only if the following criteria are met:

(1) The plan identifies the affected employees to which it applies;

(2) Each affected employee is identified by name, social security number, and by any other information required by the commissioner;

(3) The usual weekly hours of work for each affected employee are reduced by not less than ten percent and not more than fifty percent;

(4) Fringe benefits will continue to be provided on the same basis as before the reduction in work hours. In no event shall the level of health benefits be reduced due to a reduction in hours;

(5) The plan certifies that the aggregate reduction in work hours for each affected employee is in lieu of temporary layoffs which would have resulted in an equivalent reduction in work hours;

(6) The plan is approved in writing by the collective bargaining agent for each collective bargaining agreement covering any affected employee;

(7) The plan will not subsidize seasonal employers during the off season nor subsidize employers who have traditionally used part-time employees; and

(8) The employer agrees to furnish reports necessary for the proper administration of the plan and to permit access by the commissioner to all records necessary to verify the plan before approval and after approval to evaluate the application of the plan.

In addition to subsections (1) through (8) of this section, the commissioner shall take into account any other factors which may be pertinent. [2009 c 3 § 8; 1985 c 43 § 1; 1983 c 207 § 3.]

Short title—Effective date—Conflict with federal requirements—2009 c 3: See notes following RCW 50.20.120.

Conflict with federal requirements—1985 c 43: "If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1985 c 43 § 2.]

Severability—1985 c 43: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 43 § 3.]

50.60.060 Approved plan—Effective date—Expiration. A shared work compensation plan shall be effective on the date agreed upon by the department and the employer but no later than the first day of the second calendar week after the date of the commissioner's approval, unless a later date is requested by the employer. The plan shall expire at the end of the twelfth full calendar month after its effective date, or on the date specified in the plan if that date is earlier, unless the plan is revoked before that date by the commissioner. If a plan is revoked by the commissioner, it shall terminate on the date specified in the commissioner's order of revocation. [2009 c 3 § 9; 1983 c 207 § 6.]

Short title—Effective date—Conflict with federal requirements—2009 c 3: See notes following RCW 50.20.120.

50.60.070 Approved plan—Revocation—Review of plans. The commissioner may revoke approval of a shared work compensation plan for good cause. The revocation order shall be in writing and shall specify the date the revocation is effective and the reasons for the revocation. Good cause for revocation shall include failure to comply with the assurances given in the plan, unreasonable revision of productivity standards, conduct or occurrences tending to defeat the intent and effective operation of the plan, and violation of the criteria on which approval of the plan was based.

Such action may be initiated at any time by the commissioner on his or her own motion, on the motion of any of the affected employees, or on the motion of the appropriate collective bargaining agents. The commissioner shall review each plan at least once within the twelve month period the plan is in effect to assure that it continues to meet the requirements of this chapter. [2009 c 3 § 10; 1983 c 207 § 7.]

Short title—Effective date—Conflict with federal requirements—2009 c 3: See notes following RCW 50.20.120.

50.60.090 Shared work benefits—Eligibility. An individual is eligible to receive shared work benefits with respect to any week only if, in addition to meeting the conditions of eligibility for other benefits under this title, the commissioner finds that:

(1) The individual was employed during that week as an affected employee under an approved shared work compensation plan which was in effect for that week;

(2) The individual was able to work and was available for additional hours of work and for full-time work with the shared work employer; and

(3) Notwithstanding any other provision of this chapter, an individual is deemed to have been unemployed in any week for which remuneration is payable to him or her as an affected employee for less than his or her normal weekly hours of work as specified under the approved shared work

compensation plan in effect for that week. [2009 c 3 § 11; 1983 c 207 § 9.]

Short title—Effective date—Conflict with federal requirements—2009 c 3: See notes following RCW 50.20.120.

50.60.100 Benefits—Weekly amount—Maximum entitlement—Claims—Conditions. (1) The shared work weekly benefit amount shall be the product of the regular weekly unemployment compensation benefit amount multiplied by the percentage of reduction in the individual's usual weekly hours of work;

(2) No individual is eligible in any benefit year for more than the maximum entitlement established for benefits under this title, including benefits under this chapter;

(3) The shared work benefits paid an individual shall be deducted from the total benefit amount established for that individual's benefit year;

(4) Claims for shared work benefits shall be filed in the same manner as claims for other benefits under this title or as prescribed by the commissioner by rule;

(5) Provisions otherwise applicable to unemployment compensation claimants under this title apply to shared work claimants to the extent that they are not inconsistent with this chapter;

(6)(a) If an individual works in the same week for an employer other than the shared work employer and his or her combined hours of work for both employers are equal to or greater than the usual weekly hours of work with the shared work employer, the individual shall not be entitled to benefits under this chapter or title;

(b) If an individual works in the same week for both the shared work employer and another employer and his or her combined hours of work for both employers are less than his or her usual weekly hours of work, the benefit amount payable for that week shall be the weekly unemployment compensation benefit amount reduced by the same percentage that the combined hours are of the usual weekly hours of work;

(7) An individual who does not work during a week for the shared work employer, and is otherwise eligible, shall be paid his or her full weekly unemployment compensation benefit amount;

(8) An individual who does not work for the shared work employer during a week but works for another employer, and is otherwise eligible, shall be paid benefits for that week under the partial unemployment compensation provisions of this title. [2009 c 3 § 12; 1983 c 207 § 10.]

Short title—Effective date—Conflict with federal requirements—2009 c 3: See notes following RCW 50.20.120.

Title 51

INDUSTRIAL INSURANCE

Chapters

51.04 General provisions.
51.08 Definitions.
51.12 Employments and occupations covered.
51.32 Compensation—Right to and amount.
51.48 Penalties.
51.52 Appeals.

Chapter 51.04 RCW
GENERAL PROVISIONS

Sections

51.04.150 Education and outreach—Workers' compensation, premium responsibilities, and independent contractor issues.

51.04.150 Education and outreach—Workers' compensation, premium responsibilities, and independent contractor issues. The department shall conduct education and outreach to employers on workers' compensation requirements and premium responsibilities, including independent contractor issues. The department shall work with new employers on an individual basis and also establish mass education campaigns. [2009 c 432 § 10.]

Report—2009 c 432: See note following RCW 18.27.062.

Chapter 51.08 RCW
DEFINITIONS

Sections

51.08.900 Construction—Title applicable to state registered domestic partnerships—2009 c 521. *(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*

51.08.900 Construction—Title applicable to state registered domestic partnerships—2009 c 521. ***(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*** For the purposes of this title, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 138.]

Chapter 51.12 RCW
EMPLOYMENTS AND OCCUPATIONS COVERED

Sections

51.12.020 Employments excluded.

51.12.020 Employments excluded. The following are the only employments which shall not be included within the mandatory coverage of this title:

(1) Any person employed as a domestic servant in a private home by an employer who has less than two employees regularly employed forty or more hours a week in such employment.

(2) Any person employed to do gardening, maintenance, or repair, in or about the private home of the employer. For the purposes of this subsection, "maintenance" means the

work of keeping in proper condition, "repair" means to restore to sound condition after damage, and "private home" means a person's place of residence.

(3) A person whose employment is not in the course of the trade, business, or profession of his or her employer and is not in or about the private home of the employer.

(4) Any person performing services in return for aid or sustenance only, received from any religious or charitable organization.

(5) Sole proprietors or partners.

(6) Any child under eighteen years of age employed by his or her parent or parents in agricultural activities on the family farm.

(7) Jockeys while participating in or preparing horses for race meets licensed by the Washington horse racing commission pursuant to chapter 67.16 RCW.

(8)(a) Except as otherwise provided in (b) of this subsection, any bona fide officer of a corporation voluntarily elected or voluntarily appointed in accordance with the articles of incorporation or bylaws of the corporation, who at all times during the period involved is also a bona fide director, and who is also a shareholder of the corporation. Only such officers who exercise substantial control in the daily management of the corporation and whose primary responsibilities do not include the performance of manual labor are included within this subsection.

(b) Alternatively, a corporation that is not a "public company" as defined in *RCW 23B.01.400(24) may exempt eight or fewer bona fide officers, who are voluntarily elected or voluntarily appointed in accordance with the articles of incorporation or bylaws of the corporation and who exercise substantial control in the daily management of the corporation, from coverage under this title without regard to the officers' performance of manual labor if the exempted officer is a shareholder of the corporation, or may exempt any number of officers if all the exempted officers are related by blood within the third degree or marriage. If a corporation that is not a "public company" elects to be covered under subsection (8)(a) of this section, the corporation's election must be made on a form prescribed by the department and under such reasonable rules as the department may adopt.

(c) Determinations respecting the status of persons performing services for a corporation shall be made, in part, by reference to Title 23B RCW and to compliance by the corporation with its own articles of incorporation and bylaws. For the purpose of determining coverage under this title, substance shall control over form, and mandatory coverage under this title shall extend to all workers of this state, regardless of honorary titles conferred upon those actually serving as workers.

(d) A corporation may elect to cover officers who are exempted by this subsection in the manner provided by RCW 51.12.110.

(9) Services rendered by a musician or entertainer under a contract with a purchaser of the services, for a specific engagement or engagements when such musician or entertainer performs no other duties for the purchaser and is not regularly and continuously employed by the purchaser. A purchaser does not include the leader of a group or recognized entity who employs other than on a casual basis musicians or entertainers.

(10) Services performed by a newspaper carrier selling or distributing newspapers on the street or from house to house.

(11) Services performed by an insurance producer, as defined in RCW 48.17.010(5), or a surplus line broker licensed under chapter 48.15 RCW.

(12) Services performed by a booth renter. However, a person exempted under this subsection may elect coverage under RCW 51.32.030.

(13) Members of a limited liability company, if either:

(a) Management of the company is vested in its members, and the members for whom exemption is sought would qualify for exemption under subsection (5) of this section were the company a sole proprietorship or partnership; or

(b) Management of the company is vested in one or more managers, and the members for whom the exemption is sought are managers who would qualify for exemption under subsection (8) of this section were the company a corporation. [2009 c 162 § 33; 2008 c 217 § 98; 1999 c 68 § 1; 1997 c 314 § 18. Prior: 1991 c 324 § 18; 1991 c 246 § 4; 1987 c 316 § 2; 1983 c 252 § 1; 1982 c 63 § 15; 1981 c 128 § 3; 1979 c 128 § 1; 1977 ex.s. c 323 § 7; 1973 c 124 § 1; 1972 ex.s. c 43 § 7; 1971 ex.s. c 289 § 3; 1961 c 23 § 51.12.020; prior: 1955 c 74 § 3; prior: 1947 c 281 § 1, part; 1943 c 210 § 1, part; 1939 c 41 § 1, part; 1937 c 211 § 1, part; 1927 c 310 § 1, part; 1921 c 182 § 1, part; 1919 c 131 § 1, part; 1911 c 74 § 2, part; Rem. Supp. 1947 § 7674, part.]

***Reviser's note:** RCW 23B.01.400 was amended by 2009 c 189 § 1, changing subsection (24) to subsection (25).

Effective date—2009 c 162: See note following RCW 48.03.020.

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

Severability—1991 c 324: See RCW 18.16.910.

Effective date—Conflict with federal requirements—1991 c 246: See notes following RCW 51.08.195.

Effective dates—Implementation—1982 c 63: See note following RCW 51.32.095.

Severability—Effective date—1977 ex.s. c 323: See notes following RCW 51.04.040.

Chapter 51.32 RCW
COMPENSATION—RIGHT TO AND AMOUNT

Sections

51.32.099 Vocational rehabilitation pilot program—Vocational plans. *(Expires June 30, 2013.)*

51.32.099 Vocational rehabilitation pilot program—Vocational plans. ***(Expires June 30, 2013.)*** (1)(a) The legislature intends to create improved vocational outcomes for Washington state injured workers and employers through legislative and regulatory change under a pilot program for the period of January 1, 2008, through June 30, 2013. This pilot vocational system is intended to allow opportunities for eligible workers to participate in meaningful retraining in high-demand occupations, improve successful return to work and achieve positive outcomes for workers, reduce the incidence of repeat vocational services, increase accountability and responsibility, and improve cost predictability. To facilitate the study and evaluation of the results of the proposed changes, the department shall establish the temporary fund-

ing of certain state fund vocational costs through the medical aid account to ensure the appropriate assessments to employers for the costs of their claims for vocational services in accordance with RCW 51.32.0991.

(b) An independent review and study of the effects of the pilot program shall be conducted to determine whether it has achieved the appropriate outcomes at reasonable cost to the system. The review shall include, at a minimum, a report on the department's performance with regard to the provision of vocational services, the skills acquired by workers who receive retraining services, the types of training programs approved, whether the workers are employed, at what jobs and wages after completion of the training program and at various times subsequent to their claim closure, the number and demographics of workers who choose the option provided in subsection (4)(b) of this section, and their employment and earnings status at various times subsequent to claim closure. The department may adopt rules, in collaboration with the subcommittee created under (c)(iii) of this subsection, to further define the scope and elements of the required study. Reports of the independent researcher are due on December 1, 2010, December 1, 2011, and December 1, 2012.

(c) In implementing the pilot program, the department shall:

(i) Establish a vocational initiative project that includes participation by the department as a partner with WorkSource, the established state system that administers the federal workforce investment act of 1998. As a partner, the department shall place vocational professional full-time employees at pilot WorkSource locations; refer some workers for vocational services to these vocational professionals; and work with employers in work source pilot areas to market the benefits of on-the-job training programs and with community colleges to reserve slots in high employer demand programs of study as defined in RCW 28B.50.030. These on-the-job training programs and community college slots may be considered by both department and private sector vocational professionals for vocational plan development. The department will also assist stakeholders in developing additional vocational training programs in various industries, including but not limited to agriculture and construction. These programs will expand the choices available to injured workers in developing their vocational training plans with the assistance of vocational professionals.

(ii) Develop and maintain a register of state fund and self-insured workers who have been retrained or have selected any of the vocational options described in this section for at least the duration of the pilot program.

(iii) Create a vocational rehabilitation subcommittee made up of members appointed by the director for at least the duration of the pilot program. This subcommittee shall provide the business and labor partnership needed to maintain focus on the intent of the pilot program, as described in this section, and provide consistency and transparency to the development of rules and policies. The subcommittee shall report to the director at least annually and recommend to the director and the legislature any additional statutory changes needed, which may include extension of the pilot period. The subcommittee shall provide input and oversight with the department concerning the study required under (b) of this subsection. The subcommittee shall provide recommendations for additional changes or incentives for injured workers to return to work with their employer of injury.

(iv) The department shall develop an annual report concerning Washington's workers' compensation vocational rehabilitation system to the legislature and to the subcommittee by December 1, 2009, and annually thereafter with the final report due by December 1, 2012. The annual report shall include the number of workers who have participated in more than one vocational training plan beginning with plans approved on January 1, 2008, and in which industries those workers were employed. The final report shall include the department's assessment and recommendations for further legislative action, in collaboration with the subcommittee.

(2)(a) For the purposes of this section, the day the worker commences vocational plan development means the date the department or self-insurer notifies the worker of his or her eligibility for plan development services.

(b) When vocational rehabilitation is both necessary and likely to make the worker employable at gainful employment, he or she shall be provided with services necessary to develop a vocational plan that, if completed, would render the worker employable. The vocational professional assigned to the claim shall, at the initial meeting with the worker, fully inform the worker of the return-to-work priorities set forth in RCW 51.32.095(2) and of his or her rights and responsibilities under the workers' compensation vocational system. The department shall provide tools to the vocational professional for communicating this and other information required by RCW 51.32.095 and this section to the worker.

(c) On the date the worker commences vocational plan development, the department shall also inform the employer in writing of the employer's right to make a valid return-to-work offer during the first fifteen days following the commencement of vocational plan development. To be valid, the offer must be for bona fide employment with the employer of injury, consistent with the worker's documented physical and mental restrictions as provided by the worker's health care provider. When the employer makes a valid return-to-work offer, the vocational plan development services and temporary total disability compensation shall be terminated effective on the starting date for the job without regard to whether the worker accepts the return-to-work offer. Following the fifteen-day period, the employer may still provide, and the worker may accept, any valid return-to-work offer. The worker's acceptance of such an offer shall result in the termination of vocational plan development or implementation services and temporary total disability compensation effective the day the employment begins.

(3)(a) All vocational plans must contain an accountability agreement signed by the worker detailing expectations regarding progress, attendance, and other factors influencing successful participation in the plan. Failure to abide by the agreed expectations shall result in suspension of vocational benefits pursuant to RCW 51.32.110.

(b) Any formal education included as part of the vocational plan must be for an accredited or licensed program or other program approved by the department. The department shall develop rules that provide criteria for the approval of nonaccredited or unlicensed programs.

(c) The vocational plan for an individual worker must be completed and submitted to the department within ninety days of the day the worker commences vocational plan development. The department may extend the ninety days for good cause. Criteria for good cause shall be provided in rule. The frequency and reasons for good cause extensions shall be reported to the subcommittee created under subsection (1)(c)(iii) of this section.

(d) Costs for the vocational plan may include books, tuition, fees, supplies, equipment, child or dependent care, training fees for on-the-job training, the cost of furnishing tools and other equipment necessary for self-employment or reemployment, and other necessary expenses in an amount not to exceed twelve thousand dollars. This amount shall be adjusted effective July 1 of each year for vocational plans or retraining benefits available under subsection (4)(b) of this section approved on or after this date but before June 30 of the next year based on the average percentage change in tuition for the next fall quarter for all Washington state community colleges.

(e) The duration of the vocational plan shall not exceed two years from the date the plan is implemented. The worker shall receive temporary total disability compensation under RCW 51.32.090 and the cost of transportation while he or she is actively and successfully participating in a vocational plan.

(f) If the worker is required to reside away from his or her customary residence, the reasonable cost of board and lodging shall also be paid.

(4) Vocational plan development services shall be completed within ninety days of commencing. During vocational plan development the worker shall, with the assistance of a vocational professional, participate in vocational counseling and occupational exploration to include, but not be limited to, identifying possible job goals, training needs, resources, and expenses, consistent with the worker's physical and mental status. A vocational rehabilitation plan shall be developed by the worker and the vocational professional and submitted to the department or self-insurer. Following this submission, the worker shall elect one of the following options:

(a) Option 1: The department or self-insurer implements and the worker participates in the vocational plan developed by the vocational professional and approved by the worker and the department or self-insurer. For state fund claims, the department must review and approve the vocational plan before implementation may begin. If the department takes no action within fifteen days, the plan is deemed approved. The worker may, within fifteen days of approval of the plan by the department, elect option 2.

(i) Following successful completion of the vocational plan, any subsequent assessment of whether vocational rehabilitation is both necessary and likely to enable the injured worker to become employable at gainful employment under RCW 51.32.095(1) shall include consideration of transferable skills obtained in the vocational plan.

(ii) If a vocational plan is successfully completed on a claim which is thereafter reopened as provided in RCW 51.32.160, the cost and duration available for any subsequent vocational plan is limited to that in subsection (3)(d) and (e) of this section, less that previously expended.

(b) Option 2: The worker declines further vocational services under the claim and receives an amount equal to six months of temporary total disability compensation under RCW 51.32.090. The award is payable in biweekly payments in accordance with the schedule of temporary total disability payments, until such award is paid in full. These payments shall not include interest on the unpaid balance. However, upon application by the worker, and at the discretion of the department, the compensation may be converted to a lump sum payment. The vocational costs defined in subsection (3)(d) of this section shall remain available to the worker, upon application to the department or self-insurer, for a period of five years. The vocational costs shall, if expended, be available for programs or courses at any accredited or licensed institution or program from a list of those approved by the department for tuition, books, fees, supplies, equipment, and tools, without department or self-insurer oversight. The department shall issue an order as provided in RCW 51.52.050 confirming the option 2 election, setting a payment schedule, and terminating temporary total disability benefits. The department shall thereafter close the claim.

(i) If within five years from the date the option 2 order becomes final, the worker is subsequently injured or suffers an occupational disease or reopens the claim as provided in RCW 51.32.160, and vocational rehabilitation is found both necessary and likely to enable the injured worker to become employable at gainful employment under RCW 51.32.095(1), the duration of any vocational plan under subsection (3)(e) of this section shall not exceed eighteen months.

(ii) If the available vocational costs are utilized by the worker, any subsequent assessment of whether vocational rehabilitation is both necessary and likely to enable the injured worker to become employable at gainful employment under RCW 51.32.095(1) shall include consideration of the transferable skills obtained.

(iii) If the available vocational costs are utilized by the worker and the claim is thereafter reopened as provided in RCW 51.32.160, the cost available for any vocational plan is limited to that in subsection (3)(d) of this section less that previously expended.

(iv) Option 2 may only be elected once per worker.

(c) The director, in his or her sole discretion, may provide the worker vocational assistance not to exceed that in subsection (3) of this section, without regard to the worker's prior option selection or benefits expended, where vocational assistance would prevent permanent total disability under RCW 51.32.060.

(5)(a) As used in this section, "vocational plan interruption" means an occurrence which disrupts the plan to the extent the employability goal is no longer attainable. "Vocational plan interruption" does not include institutionally scheduled breaks in educational programs, occasional absence due to illness, or modifications to the plan which will allow it to be completed within the cost and time provisions of subsection (3)(d) and (e) of this section.

(b) When a vocational plan interruption is beyond the control of the worker, the department or self-insurer shall recommence plan development. If necessary to complete vocational services, the cost and duration of the plan may include credit for that expended prior to the interruption. A vocational plan interruption is considered outside the control of the worker when it is due to the closure of the accredited

institution, when it is due to a death in the worker's immediate family, or when documented changes in the worker's accepted medical conditions prevent further participation in the vocational plan.

(c) When a vocational plan interruption is the result of the worker's actions, the worker's entitlement to benefits shall be suspended in accordance with RCW 51.32.110. If plan development or implementation is recommenced, the cost and duration of the plan shall not include credit for that expended prior to the interruption. A vocational plan interruption is considered a result of the worker's actions when it is due to the failure to meet attendance expectations set by the training or educational institution, failure to achieve passing grades or acceptable performance review, unaccepted or postinjury conditions that prevent further participation in the vocational plan, or the worker's failure to abide by the accountability agreement per subsection (3)(a) of this section. [2009 c 353 § 5; 2007 c 72 § 2.]

Expiration date—2009 c 353 § 5: "Section 5 of this act expires June 30, 2013." [2009 c 353 § 7.]

Implementation—2007 c 72: "The department of labor and industries shall adopt rules necessary to implement this act." [2007 c 72 § 4.]

Effective date—2007 c 72: "This act takes effect January 1, 2008." [2007 c 72 § 5.]

Expiration date—2007 c 72: "This act expires June 30, 2013." [2007 c 72 § 6.]

Chapter 51.48 RCW
PENALTIES

Sections

51.48.022 Failure to secure payment of compensation—Stop work order—Penalty—Rules.

51.48.022 Failure to secure payment of compensation—Stop work order—Penalty—Rules. (1) In addition to the penalties provided by this chapter, an employer performing services that require registration under chapter 18.27 RCW or licensing under chapter 19.28 RCW who violates RCW 51.14.010 may be subject to a stop work order issued under this section.

(2) If the director determines after an investigation that an employer is in violation of RCW 51.14.010, the director may issue a stop work order against the employer requiring the cessation of business operations of the employer. Service of the order must be in accordance with subsection (3) of this section.

(3) When a stop work order is served on a worksite by posting a copy of the stop work order in a conspicuous location at the worksite, it is effective as to the employer's operations on that worksite. When a stop work order is served on the employer, the order is effective to all employer worksites for which the employer is not in compliance. Business operations of the employer must cease immediately upon service consistent with the stop work order. The order remains in effect until the director issues an order releasing the stop work order upon finding that the employer has come into compliance and has paid any premiums, penalties, and interest under this title or issues an order of conditional release pursuant to subsection (6) of this section.

(4) An employer who violates a stop work order is subject to a one thousand dollar penalty for each day not in compliance.

(5) An employer against whom a stop work order has been issued may request reconsideration from the department or may appeal to the board of industrial insurance appeals. The request must be made in writing to the department or the board within ten days of receiving the stop work order at the worksite or in person. If the department conducts a reconsideration, it must be concluded within ten days of receiving the request for reconsideration by the employer. The stop work order remains in effect during the period of reconsideration or appeal, unless the employer furnishes to the department a cash deposit or bond in the amount of five thousand dollars or one thousand dollars per covered worker identified, whichever is greater. At time of a final order upholding a stop work order, the bond or cash deposit will be seized and applied to the premium, penalty, and interest balance of that employer. In an appeal before the board, the appellant has the burden of proceeding with the evidence to establish a prima facie case for the relief sought in such appeal. RCW 51.52.080 through 51.52.106 govern appeals under this section. Further appeals taken from a final decision of the board under this section are governed by the provisions relating to judicial review of administrative decisions contained in RCW 34.05.510 through 34.05.598, and the department has the same right of review from the board's decisions as do employers.

(6) The director may issue an order of conditional release from the stop work order if the employer has complied with the coverage requirements of this title and agreed to pay premiums, penalties, and interest through a payment schedule. If the terms of the schedule are not met, the stop work order may be reinstated and the unpaid balance will become due.

(7) Stop work orders and penalties assessed under this chapter remain in effect against any successor corporation or business entity that has one or more of the same principals or officers as the employer against whom the stop work order was issued and which is engaged in the same or equivalent trade or activity.

(8) The department may adopt rules to carry out this section. [2009 c 196 § 1.]

Chapter 51.52 RCW
APPEALS

Sections

51.52.063 After notice of appeal—Contact with medical providers restricted—Rules.

51.52.063 After notice of appeal—Contact with medical providers restricted—Rules. (1)(a) Except as provided in (b) through (d) of this subsection, after receipt of the notice of an appeal that has been filed under RCW 51.52.060(2), the employer and its representatives shall not have contact to discuss the issues in question in the appeal with any medical provider who has examined or treated the worker at the request of the worker or treating medical provider, unless written authorization for contact is given by the worker or the worker's representative. Written authorization is only valid

if given after the date that the appeal is filed and expires ninety days after it is signed.

(b) Contact is permitted as necessary for the ongoing management of the claim, including but not limited to communication regarding the worker's treatment needs and the provider's treatment plan, vocational and return-to-work issues and assistance, and certification of the worker's inability to work, unless these issues are in question in the appeal.

(c) If the employer or its representatives wish to communicate with the examining or treating medical providers concerning the issues in question in the appeal, and no written authorization from the worker or the worker's representative has been obtained, the communication must either be:

(i) In writing, including by e-mail, sent contemporaneously to all parties with a distinct notice to the provider that any response must be in writing, including by e-mail;

(ii) In person, by telephone, or by videoconference, at a date and time mutually agreed to by all parties, with the worker or the worker's representative given the opportunity to fully participate; or

(iii) Pursuant to a properly scheduled and noted deposition.

(d) Written authorization is not required if the worker fails to identify or confirm the examining or treating medical provider as a witness as required by the board.

(2)(a) Except as provided in (b) and (c) of this subsection, after receipt of the notice of an appeal under RCW 51.52.060(2), the worker and the representative for the worker, if any, shall not have contact to discuss the issues in question in the appeal with any medical provider who has examined the worker at the request of the employer pursuant to RCW 51.36.070, unless written authorization for contact is given by the employer or its representative. Written authorization is only valid if given after the date that the appeal is filed and expires ninety days after it is signed.

(b) If the worker or the worker's representative wishes to communicate with a medical provider who has examined the worker pursuant to RCW 51.36.070, and no written authorization from the employer or its representative has been obtained, the communication must either be:

(i) In writing, including by e-mail, sent contemporaneously to all parties with a distinct notice to the provider that any response must be in writing, including by e-mail;

(ii) In person, by telephone, or by videoconference, at a date and time mutually agreed to by all parties, with the department, employer, and their representatives given the opportunity to fully participate; or

(iii) Pursuant to a properly scheduled and noted deposition.

(c) Written authorization is not required if the employer fails to identify or confirm the examining medical provider as a witness as required by the board.

(3) Subsections (1) and (2) of this section do not apply to the department.

(a) Except as provided in (b) through (d) of this subsection, after an appeal has been filed under RCW 51.52.060(2), a conference has been held to schedule hearings, and the worker has named his or her witnesses, the department and its representatives shall not have contact to discuss the issues in question in the appeal with any medical provider who has examined or treated the worker at the request of the worker or treating medical provider and has been named as a witness by the worker or their representative unless written authorization for contact is given by the worker or the worker's representative. Written authorization is only valid if given after the date that the appeal is filed and expires ninety days after it is signed.

(b) Contact is permitted as necessary for the ongoing management of the claim, including but not limited to communication regarding the worker's treatment needs and the provider's treatment plan, vocational and return-to-work issues and assistance, and certification of the worker's inability to work, unless these issues are in question in the appeal.

(c) If the department or its representatives wish to communicate with the examining or treating medical providers concerning the issues in question in the appeal, and no written authorization from the worker or the worker's representative has been obtained, the communication must either be:

(i) In writing, including by e-mail, sent contemporaneously to all parties with a distinct notice to the provider that any response must be in writing, including by e-mail;

(ii) In person, by telephone, or by videoconference, at a date and time mutually agreed to by all parties, with the worker or the worker's representative given the opportunity to fully participate; or

(iii) Pursuant to a properly scheduled and noted deposition.

(d) Written authorization is not required if the worker fails to identify or confirm the examining or treating medical provider as a witness as required by the board.

(4)(a) Except as provided in (b) and (c) of this subsection, after an appeal has been filed under RCW 51.52.060(2), a conference has been held to schedule hearings, and the worker has named his or her witnesses, the worker and the representative for the worker, if any, shall not have contact to discuss the issues in question in the appeal with any medical provider who has examined the worker at the request of the department pursuant to RCW 51.36.070, unless written authorization for contact is given by the department or its representatives. Written authorization is only valid if given after the date that the appeal is filed and expires ninety days after it is signed.

(b) If the worker or the worker's representative wishes to communicate with a medical provider who has examined the worker pursuant to RCW 51.36.070, and no written authorization from the department or its representative has been obtained, the communication must either be:

(i) In writing, including by e-mail, sent contemporaneously to all parties with a distinct notice to the provider that any response must be in writing, including by e-mail;

(ii) In person, by telephone, or by videoconference, at a date and time mutually agreed to by all parties, with the department or its representatives given the opportunity to fully participate; or

(iii) Pursuant to a properly scheduled and noted deposition.

(c) Written authorization is not required if the department fails to identify or confirm the examining medical provider as a witness as required by the board.

(5) Upon motion by either party, the industrial appeals judge assigned to the case may determine whether a party has made itself reasonably available to participate in an in-per-

son, telephone, or videoconference communication as provided in subsections (1)(c)(ii), (2)(b)(ii), (3)(c)(ii), and (4)(b)(ii) of this section. If the industrial appeals judge determines that a party has not made itself reasonably available, the judge may determine appropriate remedies including but not limited to setting a date and time for the contact being requested by a party, sanctioning the party who has not reasonably made itself available, or both.

(6) This section only applies to issues set forth in a notice of appeal under RCW 51.52.060(2).

(7) This section does not limit the reporting requirements under RCW 51.04.050 and 51.36.060 for issues not set forth in a notice of appeal.

(8) The department and board may adopt rules as necessary to implement the provisions of this section.

(9) A medical provider who discusses issues on appeal with the department or with any employer or worker or representative of any employer or worker in violation of this section shall not be held liable for such communication. [2009 c 391 § 1.]

Application—2009 c 391: "This act applies to orders entered on or after July 26, 2009." [2009 c 391 § 2.]

Title 52

FIRE PROTECTION DISTRICTS

Chapters

52.04 Annexation.
52.14 Commissioners.

Chapter 52.04 RCW
ANNEXATION

Sections

52.04.061 Annexation of adjacent city or town—City or town in two counties—Procedure.
52.04.071 Annexation of adjacent city, partial city, or town—Election.
52.04.081 Annexation of adjacent city, partial city, or town—Annual tax levies—Limitations.
52.04.091 Additional territory annexed by city to be part of district.
52.04.101 Withdrawal by annexed city, partial city, or town—Election.
52.04.111 Annexation of city, code city, partial city, or town—Transfer of employees.
52.04.121 Annexation of city, partial city, or town—Transfer of employees—Rights and benefits.
52.04.131 Annexation of city, code city, partial city, or town—Transfer of employees—Notice—Time limitation.

52.04.061 Annexation of adjacent city or town—City or town in two counties—Procedure. (1) A city or town lying adjacent to a fire protection district may be annexed to such district if at the time of the initiation of annexation the population of the city or town is 100,000 or less. The legislative authority of the city or town may initiate annexation by the adoption of an ordinance stating an intent to join the fire protection district and finding that the public interest will be served thereby. If the board of fire commissioners of the fire protection district shall concur in the annexation, notification thereof shall be transmitted to the legislative authority or authorities of the counties in which the city or town and the district are situated.

(2) When a city or town is located in two counties, and at least eighty percent of the population resides in one county, all of that portion of the city lying in that county and encompassing eighty percent of the population may be annexed to a fire protection district if at the time of the initiation of annexation the proposed area lies adjacent to a fire protection district, and the population of the proposed area is greater than five thousand but less than ten thousand. The legislative authority of the city or town may initiate annexation by the adoption of an ordinance stating an intent to join the fire protection district and finding that the public interest will be served thereby. If the board of fire commissioners of the fire protection district shall concur in the annexation, notification thereof must be transmitted to the legislative authority or authorities of the counties in which the city or town and the district are situated. [2009 c 115 § 1; 1999 c 105 § 3; 1985 c 313 § 1; 1979 ex.s. c 179 § 1. Formerly RCW 52.04.170.]

52.04.071 Annexation of adjacent city, partial city, or town—Election. The county legislative authority or authorities shall by resolution call a special election to be held in the city, partial city as set forth in RCW 52.04.061(2), or town and in the fire protection district at the next date according to RCW 29A.04.321, and shall cause notice of the election to be given as provided for in RCW 29A.52.351.

The election on the annexation of the city, partial city as set forth in RCW 52.04.061(2), or town into the fire protection district shall be conducted by the auditor of the county or counties in which the city, partial city as set forth in RCW 52.04.061(2), or town and the fire protection district are located in accordance with the general election laws of the state. The results thereof shall be canvassed by the canvassing board of the county or counties. No person is entitled to vote at the election unless he or she is a qualified elector in the city, partial city as set forth in RCW 52.04.061(2), or town or unless he or she is a qualified elector within the boundaries of the fire protection district. The ballot proposition shall be in substantially the following form:

"Shall the city, partial city as set forth in RCW 52.04.061(2), or town of . . . . . be annexed to and be a part of . . . . . fire protection district?

YES . . . . . .
NO . . . . . ."

If a majority of the persons voting on the proposition in the city, partial city as set forth in RCW 52.04.061(2), or town and a majority of the persons voting on the proposition in the fire protection district vote in favor thereof, the city, partial city as set forth in RCW 52.04.061(2), or town shall be annexed and shall be a part of the fire protection district. [2009 c 115 § 2; 2006 c 344 § 34; 1984 c 230 § 16; 1979 ex.s. c 179 § 2. Formerly RCW 52.04.180.]

Effective date—2006 c 344 §§ 1-16 and 18-40: See note following RCW 29A.04.311.

Elections: Title 29A RCW.

52.04.081 Annexation of adjacent city, partial city, or town—Annual tax levies—Limitations. The annual tax levies authorized by chapter 52.16 RCW shall be imposed throughout the fire protection district, including any city, partial city as set forth in RCW 52.04.061(2), or town annexed thereto. Any city, partial city as set forth in RCW

52.04.061(2), or town annexed to a fire protection district is entitled to levy up to three dollars and sixty cents per thousand dollars of assessed valuation less any regular levy made by the fire protection district or by a library district under RCW 27.12.390 in the incorporated area: PROVIDED, That the limitations upon regular property taxes imposed by chapter 84.55 RCW apply. [2009 c 115 § 3; 1984 c 230 § 17; 1979 ex.s. c 179 § 4. Formerly RCW 52.04.190.]

52.04.091 Additional territory annexed by city to be part of district. When any city, code city, partial city as set forth in RCW 52.04.061(2), or town is annexed to a fire protection district under RCW 52.04.061 and 52.04.071, thereafter, any territory annexed by the city shall also be annexed and be a part of the fire protection district. [2009 c 115 § 4; 1989 c 76 § 1.]

52.04.101 Withdrawal by annexed city, partial city, or town—Election. The legislative body of such a city, partial city as set forth in RCW 52.04.061(2), or town which has annexed to such a fire protection district, may, by resolution, present to the voters of such city, partial city as set forth in RCW 52.04.061(2), or town a proposition to withdraw from said fire protection district at any general election held at least three years following the annexation to the fire protection district. If the voters approve such a proposition to withdraw from said fire protection district, the city, partial city as set forth in RCW 52.04.061(2), or town shall have a vested right in the capital assets of the district proportionate to the taxes levied within the corporate boundaries of the city, partial city as set forth in RCW 52.04.061(2), or town and utilized by the fire district to acquire such assets. [2009 c 115 § 5; 1979 ex.s. c 179 § 3. Formerly RCW 52.04.200.]

52.04.111 Annexation of city, code city, partial city, or town—Transfer of employees. When any city, code city, partial city as set forth in RCW 52.04.061(2), or town is annexed to a fire protection district under RCW 52.04.061 and 52.04.071, any employee of the fire department of such city, code city, partial city as set forth in RCW 52.04.061(2), or town who (1) was at the time of annexation employed exclusively or principally in performing the powers, duties, and functions which are to be performed by the fire protection district (2) will, as a direct consequence of annexation, be separated from the employ of the city, code city, partial city as set forth in RCW 52.04.061(2), or town, and (3) can perform the duties and meet the minimum requirements of the position to be filled, then such employee may transfer his employment to the fire protection district as provided in this section and RCW 52.04.121 and 52.04.131.

For purposes of this section and RCW 52.04.121 and 52.04.131, employee means an individual whose employment with a city, code city, partial city as set forth in RCW 52.04.061(2), or town has been terminated because the city, code city, partial city as set forth in RCW 52.04.061(2), or town was annexed by a fire protection district for purposes of fire protection. [2009 c 115 § 6; 1986 c 254 § 10.]

52.04.121 Annexation of city, partial city, or town—Transfer of employees—Rights and benefits. (1) An eligible employee may transfer into the fire protection district civil service system, if any, or if none, then may request transfer of employment under this section by filing a written request with the board of fire commissioners of the fire protection district and by giving written notice to the legislative authority of the city, code city, partial city as set forth in RCW 52.04.061(2), or town. Upon receipt of such request by the board of fire commissioners the transfer of employment shall be made. The employee so transferring will (a) be on probation for the same period as are new employees of the fire protection district in the position filled, but if the transferring employee has already completed a probationary period as a firefighter prior to the transfer, then the employee may only be terminated during the probationary period for failure to adequately perform assigned duties, not meeting the minimum qualifications of the position, or behavior that would otherwise be subject to disciplinary action, (b) be eligible for promotion no later than after completion of the probationary period, (c) receive a salary at least equal to that of other new employees of the fire protection district in the position filled, and (d) in all other matters, such as retirement, vacation, and sick leave, have all the rights, benefits, and privileges to which he or she would have been entitled as an employee of the fire protection district from the beginning of employment with the city, code city, partial city as set forth in RCW 52.04.061(2), or town fire department: PROVIDED, That for purposes of layoffs by the annexing fire agency, only the time of service accrued with the annexing agency shall apply unless an agreement is reached between the collective bargaining representatives of the employees of the annexing and annexed fire agencies and the annexing and annexed fire agencies. The city, code city, partial city as set forth in RCW 52.04.061(2), or town shall, upon receipt of such notice, transmit to the board of fire commissioners a record of the employee's service with the city, code city, partial city as set forth in RCW 52.04.061(2), or town which shall be credited to such employee as a part of the period of employment in the fire protection district. All accrued benefits are transferable provided that the recipient agency provides comparable benefits. All benefits shall then accrue based on the combined seniority of each employee in the recipient agency.

(2) As many of the transferring employees shall be placed upon the payroll of the fire protection district as the district determines are needed to provide services. These needed employees shall be taken in order of seniority and the remaining employees who transfer as provided in this section and RCW 52.04.111 and 52.04.131 shall head the list for employment in the civil service system in order of their seniority, to the end that they shall be the first to be reemployed in the fire protection district when appropriate positions become available: PROVIDED, That employees who are not immediately hired by the fire protection district shall be placed on a reemployment list for a period not to exceed thirty-six months unless a longer period is authorized by an agreement reached between the collective bargaining representatives of the employees of the annexing and annexed fire agencies and the annexing and annexed fire agencies. [2009 c 115 § 7; 1994 c 73 § 4; 1986 c 254 § 11.]

Effective date—1994 c 73: See note following RCW 35.10.365.

52.04.131 Annexation of city, code city, partial city, or town—Transfer of employees—Notice—Time limitation. When a city, code city, partial city as set forth in RCW 52.04.061(2), or town is annexed to a fire protection district and as a result any employee is laid off who is eligible to transfer to the fire protection district pursuant to this section and RCW 52.04.111 and 52.04.121, the city, code city, partial city as set forth in RCW 52.04.061(2), or town shall notify the employee of the right to transfer and the employee shall have ninety days to transfer employment to the fire protection district. [2009 c 115 § 8; 1986 c 254 § 12.]

Chapter 52.14 RCW
COMMISSIONERS

Sections

52.14.110 Purchases and public works—Competitive bids required—Exceptions.

52.14.110 Purchases and public works—Competitive bids required—Exceptions. Insofar as practicable, purchases and any public works by the district shall be based on competitive bids. A formal sealed bid procedure shall be used as standard procedure for purchases and contracts for purchases executed by the board of commissioners. Formal sealed bidding shall not be required for:

(1) The purchase of any materials, supplies, or equipment if the cost will not exceed the sum of ten thousand dollars. However, whenever the estimated cost does not exceed fifty thousand dollars, the commissioners may by resolution use the process provided in RCW 39.04.190 to award contracts;

(2) Contracting for work to be done involving the construction or improvement of a fire station or other buildings where the estimated cost will not exceed the sum of twenty thousand dollars, which includes the costs of labor, material, and equipment;

(3) Contracts using the small works roster process under RCW 39.04.155; and

(4) Any contract for purchases or public work pursuant to RCW 39.04.280 if an exemption contained within that section applies to the purchase or public work. [2009 c 229 § 9; 2001 c 79 § 1; 2000 c 138 § 209; 1998 c 278 § 5; 1993 c 198 § 11; 1984 c 238 § 3.]

Purpose—Part headings not law—2000 c 138: See notes following RCW 39.04.155.

Title 53
PORT DISTRICTS

Chapters
53.08 Powers.

Chapter 53.08 RCW
POWERS

Sections

53.08.120 Contracts for labor and material—Small works roster.

53.08.120 Contracts for labor and material—Small works roster. (1) All material and work required by a port district not meeting the definition of public work in RCW 39.04.010(4) may be procured in the open market or by contract and all work ordered may be done by contract or day labor.

(2)(a) All such contracts for work meeting the definition of "public work" in RCW 39.04.010(4), the estimated cost of which exceeds three hundred thousand dollars, shall be awarded using a competitive bid process. The contract must be awarded at public bidding upon notice published in a newspaper of general circulation in the district at least thirteen days before the last date upon which bids will be received, calling for bids upon the work, plans and specifications for which shall then be on file in the office of the commission for public inspection. The same notice may call for bids on such work or material based upon plans and specifications submitted by the bidder. The competitive bidding requirements for purchases or public works may be waived pursuant to RCW 39.04.280 if an exemption contained within that section applies to the purchase or public work.

(b) For all contracts related to work meeting the definition of "public work" in RCW 39.04.010(4) that are estimated at three hundred thousand dollars or less, a port district may let contracts using the small works roster process under RCW 39.04.155 in lieu of advertising for bids. Whenever possible, the managing official shall invite at least one proposal from a minority contractor who shall otherwise qualify under this section.

When awarding such a contract for work, when utilizing proposals from the small works roster, the managing official shall give weight to the contractor submitting the lowest and best proposal, and whenever it would not violate the public interest, such contracts shall be distributed equally among contractors, including minority contractors, on the small works roster. [2009 c 74 § 2; 2008 c 130 § 1; 2000 c 138 § 210; 1999 c 29 § 1; 1998 c 278 § 6; 1993 c 198 § 13; 1988 c 235 § 1; 1982 c 92 § 1; 1975 1st ex.s. c 47 § 1; 1955 c 348 § 2. Prior: 1921 c 179 § 1, part; 1911 c 92 § 5, part; RRS § 9693, part.]

Purpose—Part headings not law—2000 c 138: See notes following RCW 39.04.155.

Severability—1955 c 348: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1955 c 348 § 7.]

Title 54
PUBLIC UTILITY DISTRICTS

Chapters
54.16 Powers.
54.24 Finances.

Chapter 54.16 RCW
POWERS

Sections

54.16.032 Authority to assist customers in the acquisition of water conservation equipment—Limitations.

54.16.032 Authority to assist customers in the acquisition of water conservation equipment—Limitations. Any district is hereby authorized, within limits established by the Constitution of the state of Washington, to assist the owners of structures in financing the acquisition and installation of fixtures, systems, and equipment, for compensation or otherwise, for the conservation or more efficient use of water in the structures under a water conservation plan adopted by the district if the cost per unit of water saved or conserved by the use of the fixtures, systems, and equipment is less than the cost per unit of water supplied by the next least costly new water source available to the district to meet future demand. Except where otherwise authorized, assistance shall be limited to:

(1) Providing an inspection of the structure, either directly or through one or more inspectors under contract, to determine and inform the owner of the estimated cost of purchasing and installing conservation fixtures, systems, and equipment for which financial assistance will be approved and the estimated life cycle savings to the water system and the consumer that are likely to result from the installation of the fixtures, systems, or equipment;

(2) Providing a list of businesses that sell and install the fixtures, systems, and equipment within or in close proximity to the service area of the city or town, each of which businesses shall have requested to be included and shall have the ability to provide the products in a workmanlike manner and to utilize the fixtures, systems, and equipment in accordance with the prevailing national standards;

(3) Arranging to have approved conservation fixtures, systems, and equipment installed by a private contractor whose bid is acceptable to the owner of the structure and verifying the installation; and

(4) Arranging or providing financing for the purchase and installation of approved conservation fixtures, systems, and equipment. The fixtures, systems, and equipment shall be purchased or installed by a private business, the owner, or the utility.

Pay back shall be in the form of incremental additions to the utility bill, billed either together with use charge or separately. Loans shall not exceed two hundred forty months in length. [2009 c 416 § 2; 1989 c 421 § 4.]

Intent—Contingent effective date—1989 c 421: See notes following RCW 35.92.017.

Chapter 54.24 RCW
FINANCES

Sections

54.24.010 Treasurer—Bond—Duties—Funds—Depositaries.

54.24.010 Treasurer—Bond—Duties—Funds—Depositaries. (1) The treasurer of the county in which a utility district is located shall be ex officio treasurer of the district: PROVIDED, That the commission by resolution may designate some other person having experience in financial or fiscal matters as treasurer of the utility district. The commission may require a bond, with a surety company authorized to do business in the state of Washington, in an amount and under the terms and conditions which the commission by resolution from time to time finds will protect the district against loss. The premium on any such bond shall be paid by the district.

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

(3) If the treasurer of the district is the treasurer of the county all district funds shall be deposited with the county depositaries under the same restrictions, contracts, and security as provided for county depositaries; if the treasurer of the district is some other person, all funds shall be deposited in such bank or banks authorized to do business in this state as the commission by resolution shall designate, and with surety bond to the district or securities in lieu thereof of the kind, no less in amount, as provided in *RCW 36.48.020 for deposit of county funds.

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

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

(6) A district may provide and require a reasonable bond of any other person handling moneys or securities of the district: PROVIDED, That the district pays the premium thereon.

(7) If the treasurer of the district is some other person than the treasurer of the county, the commission may adopt a policy for the payment of claims or other obligations of the utility district, which are payable out of solvent funds, and may elect to pay such obligations by check or warrant. However, if the applicable fund is not solvent at the time payment is ordered, then no check may be issued and payment shall be by warrant. When checks are to be used, the commission shall designate the qualified public depositary upon which the checks are to be drawn as well as the officers required or authorized to sign the checks. For the purposes of this chapter, "warrant" includes checks where authorized by this subsection. [2009 c 173 § 2; 1999 c 18 § 6; 1959 c 218 § 2; 1957 c 140 § 1; 1955 c 124 § 7. Prior: (i) 1931 c 1 § 9; RRS § 11613. (ii) 1931 c 1 § 8, part; RRS § 11612, part.]

***Reviser's note:** RCW 36.48.020 was repealed by 1984 c 177 § 21.

Title 57
WATER-SEWER DISTRICTS

Chapters

57.08 Powers.
57.16 Comprehensive plan—Local improvement districts.

Chapter 57.08 RCW
POWERS

Sections

57.08.005 Powers.
57.08.044 Contracts for acquisition, use, operation, etc., authorized—Service to areas in other districts.
57.08.047 Provision of water, reclaimed water, sewer, or drainage service beyond district or city subject to review by boundary review board.
57.08.050 Contracts for materials and work—Notice—Bids—Small works roster—Waiver of requirements.

57.08.005 Powers. A district shall have the following powers:

(1) To acquire by purchase or condemnation, or both, all lands, property and property rights, and all water and water rights, both within and without the district, necessary for its purposes. The right of eminent domain shall be exercised in the same manner and by the same procedure as provided for cities and towns, insofar as consistent with this title, except that all assessment or reassessment rolls to be prepared and filed by eminent domain commissioners or commissioners appointed by the court shall be prepared and filed by the district, and the duties devolving upon the city treasurer are imposed upon the county treasurer;

(2) To lease real or personal property necessary for its purposes for a term of years for which that leased property may reasonably be needed;

(3) To construct, condemn and purchase, add to, maintain, and supply waterworks to furnish the district and inhabitants thereof and any other persons, both within and without the district, with an ample supply of water for all uses and purposes public and private with full authority to regulate and control the use, content, distribution, and price thereof in such a manner as is not in conflict with general law and may construct, acquire, or own buildings and other necessary district facilities. Where a customer connected to the district's system uses the water on an intermittent or transient basis, a district may charge for providing water service to such a customer, regardless of the amount of water, if any, used by the customer. District waterworks may include facilities which result in combined water supply and electric generation, if the electricity generated thereby is a by-product of the water supply system. That electricity may be used by the district or sold to any entity authorized by law to use or distribute electricity. Electricity is deemed a by-product when the electrical generation is subordinate to the primary purpose of water supply. For such purposes, a district may take, condemn and purchase, acquire, and retain water from any public or navigable lake, river or watercourse, or any underflowing water, and by means of aqueducts or pipeline conduct the same throughout the district and any city or town therein and carry it along and upon public highways, roads, and streets, within and without such district. For the purpose of constructing or laying aqueducts or pipelines, dams, or waterworks or other necessary structures in storing and retaining water or for any other lawful purpose such district may occupy the beds and shores up to the high water mark of any such lake, river, or other watercourse, and may acquire by purchase or condemnation such property or property rights or privileges as may be necessary to protect its water supply from pollution. For the purposes of waterworks which include facilities for the generation of electricity as a by-product, nothing in this section may be construed to authorize a district to condemn electric generating, transmission, or distribution rights or facilities of entities authorized by law to distribute electricity, or to acquire such rights or facilities without the consent of the owner;

(4) To purchase and take water from any municipal corporation, private person, or entity. A district contiguous to Canada may contract with a Canadian corporation for the purchase of water and for the construction, purchase, maintenance, and supply of waterworks to furnish the district and inhabitants thereof and residents of Canada with an ample supply of water under the terms approved by the board of commissioners;

(5) To construct, condemn and purchase, add to, maintain, and operate systems of sewers for the purpose of furnishing the district, the inhabitants thereof, and persons outside the district with an adequate system of sewers for all uses and purposes, public and private, including but not limited to on-site sewage disposal facilities, approved septic tanks or approved septic tank systems, on-site sanitary sewerage systems, inspection services and maintenance services for private and public on-site systems, point and nonpoint water pollution monitoring programs that are directly related to the sewerage facilities and programs operated by a district, other facilities, programs, and systems for the collection, interception, treatment, and disposal of wastewater, and for the control of pollution from wastewater with full authority to regulate the use and operation thereof and the service rates to be charged. Under this chapter, after July 1, 1998, any requirements for pumping the septic tank of an on-site sewage system should be based, among other things, on actual measurement of accumulation of sludge and scum by a trained inspector, trained owner's agent, or trained owner. Training must occur in a program approved by the state board of health or by a local health officer. Sewage facilities may include facilities which result in combined sewage disposal or treatment and electric or methane gas generation, except that the electricity or methane gas generated thereby is a by-product of the system of sewers. Such electricity or methane gas may be used by the district or sold to any entity authorized by law to distribute electricity or methane gas. Electricity and methane gas are deemed by-products when the electrical or methane gas generation is subordinate to the primary purpose of sewage disposal or treatment. The district may also sell surplus methane gas, which may be produced as a by-product. For such purposes a district may conduct sewage throughout the district and throughout other political subdivisions within the district, and construct and lay sewer pipe along and upon public highways, roads, and streets, within and without the district, and condemn and purchase or acquire land and rights-of-way necessary for such sewer pipe. A district may erect sewage treatment plants within or without the district, and may acquire, by purchase or condemnation, properties or privileges necessary to be had to protect any lakes, rivers, or watercourses and also other areas of land from pollution from its sewers or its sewage treatment plant. For the purposes of sewage facilities which include facilities that result in combined sewage disposal or treatment and electric generation where the electric generation is a by-product, nothing in this section may be construed to authorize a district to condemn

electric generating, transmission, or distribution rights or facilities of entities authorized by law to distribute electricity, or to acquire such rights or facilities without the consent of the owners;

(6) The authority to construct, condemn and purchase, add to, maintain, and operate systems of reclaimed water as authorized by chapter 90.46 RCW for the purpose of furnishing the district and the inhabitants thereof with reclaimed water for all authorized uses and purposes, public and private, including with full authority to regulate the use and operation thereof and the service rates to be charged. In compliance with other sections of this chapter, a district may also provide reclaimed water services to persons outside the district;

(7)(a) To construct, condemn and purchase, add to, maintain, and operate systems of drainage for the benefit and use of the district, the inhabitants thereof, and persons outside the district with an adequate system of drainage, including but not limited to facilities and systems for the collection, interception, treatment, and disposal of storm or surface waters, and for the protection, preservation, and rehabilitation of surface and underground waters, and drainage facilities for public highways, streets, and roads, with full authority to regulate the use and operation thereof and, except as provided in (b) of this subsection, the service rates to be charged.

(b) The rate a district may charge under this section for storm or surface water sewer systems or the portion of the rate allocable to the storm or surface water sewer system of combined sanitary sewage and storm or surface water sewer systems shall be reduced by a minimum of ten percent for any new or remodeled commercial building that utilizes a permissive rainwater harvesting system. Rainwater harvesting systems shall be properly sized to utilize the available roof surface of the building. The jurisdiction shall consider rate reductions in excess of ten percent dependent upon the amount of rainwater harvested.

(c) Drainage facilities may include natural systems. Drainage facilities may include facilities which result in combined drainage facilities and electric generation, except that the electricity generated thereby is a by-product of the drainage system. Such electricity may be used by the district or sold to any entity authorized by law to distribute electricity. Electricity is deemed a by-product when the electrical generation is subordinate to the primary purpose of drainage collection, disposal, and treatment. For such purposes, a district may conduct storm or surface water throughout the district and throughout other political subdivisions within the district, construct and lay drainage pipe and culverts along and upon public highways, roads, and streets, within and without the district, and condemn and purchase or acquire land and rights-of-way necessary for such drainage systems. A district may provide or erect facilities and improvements for the treatment and disposal of storm or surface water within or without the district, and may acquire, by purchase or condemnation, properties or privileges necessary to be had to protect any lakes, rivers, or watercourses and also other areas of land from pollution from storm or surface waters. For the purposes of drainage facilities which include facilities that also generate electricity as a by-product, nothing in this section may be construed to authorize a district to condemn electric generating, transmission, or distribution rights or facilities of entities authorized by law to distribute electricity, or to acquire such rights or facilities without the consent of the owners;

(8) To construct, condemn, acquire, and own buildings and other necessary district facilities;

(9) To compel all property owners within the district located within an area served by the district's system of sewers to connect their private drain and sewer systems with the district's system under such penalty as the commissioners shall prescribe by resolution. The district may for such purpose enter upon private property and connect the private drains or sewers with the district system and the cost thereof shall be charged against the property owner and shall be a lien upon property served;

(10) Where a district contains within its borders, abuts, or is located adjacent to any lake, stream, groundwater as defined by RCW 90.44.035, or other waterway within the state of Washington, to provide for the reduction, minimization, or elimination of pollutants from those waters in accordance with the district's comprehensive plan, and to issue general obligation bonds, revenue bonds, local improvement district bonds, or utility local improvement bonds for the purpose of paying all or any part of the cost of reducing, minimizing, or eliminating the pollutants from these waters;

(11) Subject to subsection (7) of this section, to fix rates and charges for water, sewer, reclaimed water, and drain service supplied and to charge property owners seeking to connect to the district's systems, as a condition to granting the right to so connect, in addition to the cost of the connection, such reasonable connection charge as the board of commissioners shall determine to be proper in order that those property owners shall bear their equitable share of the cost of the system. For the purposes of calculating a connection charge, the board of commissioners shall determine the pro rata share of the cost of existing facilities and facilities planned for construction within the next ten years and contained in an adopted comprehensive plan and other costs borne by the district which are directly attributable to the improvements required by property owners seeking to connect to the system. The cost of existing facilities shall not include those portions of the system which have been donated or which have been paid for by grants. The connection charge may include interest charges applied from the date of construction of the system until the connection, or for a period not to exceed ten years, whichever is shorter, at a rate commensurate with the rate of interest applicable to the district at the time of construction or major rehabilitation of the system, or at the time of installation of the lines to which the property owner is seeking to connect. In lieu of requiring the installation of permanent local facilities not planned for construction by the district, a district may permit connection to the water and/or sewer systems through temporary facilities installed at the property owner's expense, provided the property owner pays a connection charge consistent with the provisions of this chapter and agrees, in the future, to connect to permanent facilities when they are installed; or a district may permit connection to the water and/or sewer systems through temporary facilities and collect from property owners so connecting a proportionate share of the estimated cost of future local facilities needed to serve the property, as determined by the

district. The amount collected, including interest at a rate commensurate with the rate of interest applicable to the district at the time of construction of the temporary facilities, shall be held for contribution to the construction of the permanent local facilities by other developers or the district. The amount collected shall be deemed full satisfaction of the proportionate share of the actual cost of construction of the permanent local facilities. If the permanent local facilities are not constructed within fifteen years of the date of payment, the amount collected, including any accrued interest, shall be returned to the property owner, according to the records of the county auditor on the date of return. If the amount collected is returned to the property owner, and permanent local facilities capable of serving the property are constructed thereafter, the property owner at the time of construction of such permanent local facilities shall pay a proportionate share of the cost of such permanent local facilities, in addition to reasonable connection charges and other charges authorized by this section. A district may permit payment of the cost of connection and the reasonable connection charge to be paid with interest in installments over a period not exceeding fifteen years. The county treasurer may charge and collect a fee of three dollars for each year for the treasurer's services. Those fees shall be a charge to be included as part of each annual installment, and shall be credited to the county current expense fund by the county treasurer. Revenues from connection charges excluding permit fees are to be considered payments in aid of construction as defined by department of revenue rule. Rates or charges for on-site inspection and maintenance services may not be imposed under this chapter on the development, construction, or reconstruction of property.

Before adopting on-site inspection and maintenance utility services, or incorporating residences into an on-site inspection and maintenance or sewer utility under this chapter, notification must be provided, prior to the applicable public hearing, to all residences within the proposed service area that have on-site systems permitted by the local health officer. The notice must clearly state that the residence is within the proposed service area and must provide information on estimated rates or charges that may be imposed for the service.

A water-sewer district shall not provide on-site sewage system inspection, pumping services, or other maintenance or repair services under this section using water-sewer district employees unless the on-site system is connected by a publicly owned collection system to the water-sewer district's sewerage system, and the on-site system represents the first step in the sewage disposal process.

Except as otherwise provided in RCW 90.03.525, any public entity and public property, including the state of Washington and state property, shall be subject to rates and charges for sewer, water, storm water control, drainage, and street lighting facilities to the same extent private persons and private property are subject to those rates and charges that are imposed by districts. In setting those rates and charges, consideration may be made of in-kind services, such as stream improvements or donation of property;

(12) To contract with individuals, associations and corporations, the state of Washington, and the United States;

(13) To employ such persons as are needed to carry out the district's purposes and fix salaries and any bond requirements for those employees;

(14) To contract for the provision of engineering, legal, and other professional services as in the board of commissioner's discretion is necessary in carrying out their duties;

(15) To sue and be sued;

(16) To loan and borrow funds and to issue bonds and instruments evidencing indebtedness under chapter 57.20 RCW and other applicable laws;

(17) To transfer funds, real or personal property, property interests, or services subject to RCW 57.08.015;

(18) To levy taxes in accordance with this chapter and chapters 57.04 and 57.20 RCW;

(19) To provide for making local improvements and to levy and collect special assessments on property benefitted thereby, and for paying for the same or any portion thereof in accordance with chapter 57.16 RCW;

(20) To establish street lighting systems under RCW 57.08.060;

(21) To exercise such other powers as are granted to water-sewer districts by this title or other applicable laws; and

(22) To exercise any of the powers granted to cities and counties with respect to the acquisition, construction, maintenance, operation of, and fixing rates and charges for waterworks and systems of sewerage and drainage. [2009 c 253 § 1; 2007 c 31 § 8; 2004 c 202 § 1; 2003 c 394 § 5; 1999 c 153 § 2; 1997 c 447 § 16; 1996 c 230 § 301.]

Part headings not law—1999 c 153: See note following RCW 57.04.050.

Finding—Purpose—1997 c 447: See note following RCW 70.05.074.

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.08.044 Contracts for acquisition, use, operation, etc., authorized—Service to areas in other districts. A district may enter into contracts with any county, city, town, or any other municipal or quasi-municipal corporation, or with any private person or corporation, for the acquisition, ownership, use, and operation of any property, facilities, or services, within or without the district, and necessary or desirable to carry out the purposes of the district. A district may provide water, reclaimed water, sewer, drainage, or street lighting services to property owners in areas within or without the limits of the district, except that if the area to be served is located within another existing district duly authorized to exercise district powers in that area, then water, reclaimed water, sewer, drainage, or street lighting service may not be so provided by contract or otherwise without the consent by resolution of the board of commissioners of that other district. [2009 c 253 § 2; 1999 c 153 § 7; 1996 c 230 § 309; 1981 c 45 § 4; 1959 c 103 § 3; 1953 c 250 § 8; 1941 c 210 § 48; Rem. Supp. 1941 § 9425-57. Formerly RCW 56.08.060.]

Part headings not law—1999 c 153: See note following RCW 57.04.050.

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Legislative declaration—"District" defined—Severability—1981 c 45: See notes following RCW 36.93.090.

Severability—1959 c 103: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1959 c 103 § 19.]

Water-sewer districts and municipalities, joint agreements: RCW 35.67.300.

57.08.047 Provision of water, reclaimed water, sewer, or drainage service beyond district or city subject to review by boundary review board. The provision of water, reclaimed water, sewer, or drainage service beyond the boundaries of a special purpose district or city may be subject to potential review by a boundary review board under chapter 36.93 RCW. [2009 c 253 § 3; 1999 c 153 § 8; 1996 c 230 § 310; 1989 c 84 § 57.]

Part headings not law—1999 c 153: See note following RCW 57.04.050.

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

57.08.050 Contracts for materials and work—Notice—Bids—Small works roster—Waiver of requirements. (1) All work ordered, the estimated cost of which is in excess of twenty thousand dollars, shall be let by contract and competitive bidding. Before awarding any such contract the board of commissioners shall publish a notice in a newspaper of general circulation where the district is located at least once thirteen days before the last date upon which bids will be received, inviting sealed proposals for such work, plans and specifications which must at the time of publication of such notice be on file in the office of the board of commissioners subject to the public inspection. The notice shall state generally the work to be done and shall call for proposals for doing the same to be sealed and filed with the board of commissioners on or before the day and hour named therein.

Each bid shall be accompanied by a certified or cashier's check or postal money order payable to the order of the county treasurer for a sum not less than five percent of the amount of the bid, or accompanied by a bid bond in an amount not less than five percent of the bid with a corporate surety licensed to do business in the state, conditioned that the bidder will pay the district as liquidated damages the amount specified in the bond, unless the bidder enters into a contract in accordance with the bidder's bid, and no bid shall be considered unless accompanied by such check, cash or bid bond. At the time and place named such bids shall be publicly opened and read and the board of commissioners shall proceed to canvass the bids and may let such contract to the lowest responsible bidder upon plans and specifications on file or to the best bidder submitting the bidder's own plans and specifications. The board of commissioners may reject all bids for good cause and readvertise and in such case all checks, cash or bid bonds shall be returned to the bidders. If the contract is let, then all checks, cash, or bid bonds shall be returned to the bidders, except that of the successful bidder, which shall be retained until a contract shall be entered into for doing the work, and a bond to perform such work furnished with sureties satisfactory to the board of commissioners in the full amount of the contract price between the bidder and the commission in accordance with the bid. If the bidder fails to enter into the contract in accordance with the bid and furnish the bond within ten days from the date at which the bidder is notified that the bidder is the successful bidder, the check, cash, or bid bonds and the amount thereof shall be forfeited to the district. If the bidder fails to enter into a contract in accordance with the bidder's bid, and the board of commissioners deems it necessary to take legal action to collect on any bid bond required by this section, then the district shall be entitled to collect from the bidder any legal expenses, including reasonable attorneys' fees occasioned thereby. A low bidder who claims error and fails to enter into a contract is prohibited from bidding on the same project if a second or subsequent call for bids is made for the project.

(2) As an alternative to requirements under subsection (1) of this section, a water-sewer district may let contracts using the small works roster process under RCW 39.04.155.

(3) Any purchase of materials, supplies, or equipment, with an estimated cost in excess of forty thousand dollars, shall be by contract. Any purchase of materials, supplies, or equipment, with an estimated cost of less than fifty thousand dollars shall be made using the process provided in RCW 39.04.190. Any purchase of materials, supplies, or equipment with an estimated cost of fifty thousand dollars or more shall be made by competitive bidding following the procedure for letting contracts for projects under subsection (1) of this section.

(4) As an alternative to requirements under subsection (3) of this section, a water-sewer district may let contracts for purchase of materials, supplies, or equipment with the suppliers designated on current state agency, county, city, or town purchasing rosters for the materials, supplies, or equipment, when the roster has been established in accordance with the competitive bidding law for purchases applicable to the state agency, county, city, or town. The price and terms for purchases shall be as described on the applicable roster.

(5) The board may waive the competitive bidding requirements of this section pursuant to RCW 39.04.280 if an exemption contained within that section applies to the purchase or public work. [2009 c 229 § 11. Prior: 2003 c 145 § 1; 2003 c 60 § 1; 2000 c 138 § 212; 1999 c 153 § 9; 1998 c 278 § 8; 1997 c 245 § 4; prior: 1996 c 230 § 311; 1996 c 18 § 14; 1994 c 31 § 2; prior: 1993 c 198 § 21; 1993 c 45 § 8; 1989 c 105 § 2; 1987 c 309 § 2; 1985 c 154 § 2; 1983 c 38 § 2; 1979 ex.s. c 137 § 2; 1975 1st ex.s. c 64 § 2; 1965 c 72 § 1; 1947 c 216 § 2; 1929 c 114 § 21; Rem. Supp. 1947 § 11598. Cf. 1913 c 161 § 20.]

Purpose—Part headings not law—2000 c 138: See notes following RCW 39.04.155.

Part headings not law—1999 c 153: See note following RCW 57.04.050.

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Chapter 57.16 RCW

COMPREHENSIVE PLAN—LOCAL IMPROVEMENT DISTRICTS

Sections

57.16.010 General comprehensive plan of improvements—Approval of engineer, director of health, and city, town, or county—Amendments.

57.16.010 General comprehensive plan of improvements—Approval of engineer, director of health, and city, town, or county—Amendments. Before ordering any improvements or submitting to vote any proposition for incurring any indebtedness, the district commissioners shall adopt a general comprehensive plan for the type or types of facilities the district proposes to provide. A district may prepare a separate general comprehensive plan for each of these services and other services that districts are permitted to provide, or the district may combine any or all of its comprehensive plans into a single general comprehensive plan.

(1) For a general comprehensive plan of a water supply system, the commissioners shall investigate the several portions and sections of the district for the purpose of determining the present and reasonably foreseeable future needs thereof; shall examine and investigate, determine, and select a water supply or water supplies for such district suitable and adequate for present and reasonably foreseeable future needs thereof; and shall consider and determine a general system or plan for acquiring such water supply or water supplies, and the lands, waters, and water rights and easements necessary therefor, and for retaining and storing any such waters, and erecting dams, reservoirs, aqueducts, and pipe lines to convey the same throughout such district. There may be included as part of the system the installation of fire hydrants at suitable places throughout the district. The commissioners shall determine a general comprehensive plan for distributing such water throughout such portion of the district as may then reasonably be served by means of subsidiary aqueducts and pipe lines, and a long-term plan for financing the planned projects and the method of distributing the cost and expense thereof, including the creation of local improvement districts or utility local improvement districts, and shall determine whether the whole or part of the cost and expenses shall be paid from revenue or general obligation bonds.

(2) For a general comprehensive plan for a sewer system, the commissioners shall investigate all portions and sections of the district and select a general comprehensive plan for a sewer system for the district suitable and adequate for present and reasonably foreseeable future needs thereof. The general comprehensive plan shall provide for treatment plants and other methods and services, if any, for the prevention, control, and reduction of water pollution and for the treatment and disposal of sewage and industrial and other liquid wastes now produced or which may reasonably be expected to be produced within the district and shall, for such portions of the district as may then reasonably be served, provide for the acquisition or construction and installation of laterals, trunk sewers, intercepting sewers, syphons, pumping stations or other sewage collection facilities, septic tanks, septic tank systems or drainfields, and systems for the transmission and treatment of wastewater. The general comprehensive plan shall provide a long-term plan for financing the planned projects and the method of distributing the cost and expense of the sewer system and services, including the creation of local improvement districts or utility local improvement districts; and provide whether the whole or some part of the cost and expenses shall be paid from revenue or general obligation bonds.

(3) For a general comprehensive plan for a reclaimed water system, the commissioners shall investigate all portions and sections of the district and select a general comprehensive plan for a reclaimed water system for the district suitable and adequate for present and reasonably foreseeable future needs thereof. The general comprehensive plan must provide for treatment plants or the use of existing treatment plants and other methods and services, if any, for reclaiming water and must, for such portions of the district as may then reasonably be served, provide for a general system or plan for acquiring the lands and easements necessary therefor, including retaining and storing reclaimed water, and for the acquisition or construction and installation of mains, transmission mains, pumping stations, hydrants, or other facilities and systems for the reclamation and transmission of reclaimed water throughout such district for such uses, public and private, as authorized by law. The general comprehensive plan must provide a long-term plan for financing the planned projects and the method of distributing the cost and expense of the reclaimed water system and services, including the creation of local improvement districts or utility local improvement districts; and provide whether the whole or some part of the cost and expenses must be paid from revenue or general obligation bonds.

(4) For a general comprehensive plan for a drainage system, the commissioners shall investigate all portions and sections of the district and adopt a general comprehensive plan for a drainage system for the district suitable and adequate for present and future needs thereof. The general comprehensive plan shall provide for a system to collect, treat, and dispose of storm water or surface waters, including use of natural systems and the construction or provision of culverts, storm water pipes, ponds, and other systems. The general comprehensive plan shall provide for a long-term plan for financing the planned projects and provide for a method of distributing the cost and expense of the drainage system, including local improvement districts or utility local improvement districts, and provide whether the whole or some part of the cost and expenses shall be paid from revenue or general obligation bonds.

(5) For a general comprehensive plan for street lighting, the commissioners shall investigate all portions and sections of the district and adopt a general comprehensive plan for street lighting for the district suitable and adequate for present and future needs thereof. The general comprehensive plan shall provide for a system or systems of street lighting, provide for a long-term plan for financing the planned projects, and provide for a method of distributing the cost and expense of the street lighting system, including local improvement districts or utility local improvement districts, and provide whether the whole or some part of the cost and expenses shall be paid from revenue or general obligation bonds.

(6) The commissioners may employ such engineering and legal service as in their discretion is necessary in carrying out their duties.

(7) Any general comprehensive plan or plans shall be adopted by resolution and submitted to an engineer designated by the legislative authority of the county in which fifty-one percent or more of the area of the district is located, and to the director of health of the county in which the district or any portion thereof is located, and must be approved in writing by the engineer and director of health, except that a com-

prehensive plan relating to street lighting shall not be submitted to or approved by the director of health. The general comprehensive plan shall be approved, conditionally approved, or rejected by the director of health and by the designated engineer within sixty days of their respective receipt of the plan. However, this sixty-day time limitation may be extended by the director of health or engineer for up to an additional sixty days if sufficient time is not available to review adequately the general comprehensive plans.

Before becoming effective, the general comprehensive plan shall also be submitted to, and approved by resolution of, the legislative authority of every county within whose boundaries all or a portion of the district lies. The general comprehensive plan shall be approved, conditionally approved, or rejected by each of the county legislative authorities pursuant to the criteria in RCW 57.02.040 for approving the formation, reorganization, annexation, consolidation, or merger of districts. The resolution, ordinance, or motion of the legislative body that rejects the comprehensive plan or a part thereof shall specifically state in what particular the comprehensive plan or part thereof rejected fails to meet these criteria. The general comprehensive plan shall not provide for the extension or location of facilities that are inconsistent with the requirements of RCW 36.70A.110. Nothing in this chapter shall preclude a county from rejecting a proposed plan because it is in conflict with the criteria in RCW 57.02.040. Each general comprehensive plan shall be deemed approved if the county legislative authority fails to reject or conditionally approve the plan within ninety days of the plan's submission to the county legislative authority or within thirty days of a hearing on the plan when the hearing is held within ninety days of submission to the county legislative authority. However, a county legislative authority may extend this ninety-day time limitation by up to an additional ninety days where a finding is made that ninety days is insufficient to review adequately the general comprehensive plan. In addition, the commissioners and the county legislative authority may mutually agree to an extension of the deadlines in this section.

If the district includes portions or all of one or more cities or towns, the general comprehensive plan shall be submitted also to, and approved by resolution of, the legislative authorities of the cities and towns before becoming effective. The general comprehensive plan shall be deemed approved by the city or town legislative authority if the city or town legislative authority fails to reject or conditionally approve the plan within ninety days of the plan's submission to the city or town or within thirty days of a hearing on the plan when the hearing is held within ninety days of submission to the county legislative authority. However, a city or town legislative authority may extend this time limitation by up to an additional ninety days where a finding is made that insufficient time exists to adequately review the general comprehensive plan within these time limitations. In addition, the commissioners and the city or town legislative authority may mutually agree to an extension of the deadlines in this section.

Before becoming effective, the general comprehensive plan shall be approved by any state agency whose approval may be required by applicable law. Before becoming effective, any amendment to, alteration of, or addition to, a general comprehensive plan shall also be subject to such approval as if it were a new general comprehensive plan. However, only if the amendment, alteration, or addition affects a particular city or town, shall the amendment, alteration, or addition be subject to approval by such particular city or town governing body. [2009 c 253 § 4; 1997 c 447 § 18; 1996 c 230 § 501; 1990 1st ex.s. c 17 § 35; 1989 c 389 § 10; 1982 c 213 § 2; 1979 c 23 § 2; 1977 ex.s. c 299 § 3; 1959 c 108 § 6; 1959 c 18 § 6. Prior: 1939 c 128 § 2, part; 1937 c 177 § 1; 1929 c 114 § 10, part; RRS § 11588. Cf. 1913 c 161 § 10.]

Finding—Purpose—1997 c 447: See note following RCW 70.05.074.

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

Title 58

BOUNDARIES AND PLATS

Chapters

58.17 Plats—Subdivisions—Dedications.

Chapter 58.17 RCW
PLATS—SUBDIVISIONS—DEDICATIONS

Sections

58.17.310 Application for approval of plat within irrigation district—Approval without provision for irrigation prohibited.

58.17.310 Application for approval of plat within irrigation district—Approval without provision for irrigation prohibited. (1) Whenever a city, town, or county receives an application for the approval of a plat of a subdivision that lies in whole or in part in an irrigation district organized pursuant to chapter 87.03 RCW, the responsible administrator shall give written notice of the application, including a legal description of the short subdivision and a location map, to the irrigation district. The irrigation district shall, after receiving the notice, submit to the responsible administrator who furnished the notice a statement with any information or conditions for approval that the irrigation district deems to be necessary regarding the proposed division's effect upon the structural integrity, including lateral support, of the irrigation district facilities, other risk exposures, and the safety of the public and irrigation district.

(2) In addition to any other requirements imposed by the provisions of this chapter, the legislative authority of any city, town, or county shall not approve a short plat or final plat, as defined in RCW 58.17.020, for any subdivision, short subdivision, lot, tract, parcel, or site which lies in whole or in part in an irrigation district organized pursuant to chapter 87.03 RCW unless there has been provided an irrigation water right-of-way for each parcel of land in such district. In addition, if the subdivision, short subdivision, lot, tract, parcel, or site lies within land within the district classified as irrigable, completed irrigation water distribution facilities for such land may be required by the irrigation district by resolution, bylaw, or rule of general applicability as a condition for approval of the short plat or final plat by the legislative authority of the city, town, or county. Rights-of-way shall be

evidenced by the respective plats submitted for final approval to the appropriate legislative authority. In addition, if the subdivision, short subdivision, lot, tract, parcel, or site to be platted is wholly or partially within an irrigation district of two hundred thousand acres or more and has been previously platted by the United States bureau of reclamation as a farm unit in the district, the legislative authority shall not approve for such land a short plat or final plat as defined in RCW 58.17.020 without the approval of the irrigation district and the administrator or manager of the project of the bureau of reclamation, or its successor agency, within which that district lies. Compliance with the requirements of this section together with all other applicable provisions of this chapter shall be a prerequisite, within the expressed purpose of this chapter, to any sale, lease, or development of land in this state. [2009 c 145 § 1; 1990 c 194 § 1; 1986 c 39 § 1; 1985 c 160 § 1; 1973 c 150 § 2.]

Title 59

LANDLORD AND TENANT

Chapters

59.12 Forcible entry and forcible and unlawful detainer.
59.18 Residential landlord-tenant act.
59.20 Manufactured/mobile home landlord-tenant act.
59.21 Mobile home relocation assistance.
59.22 Office of manufactured housing—Resident-owned mobile home parks.

Chapter 59.12 RCW

FORCIBLE ENTRY AND FORCIBLE AND UNLAWFUL DETAINER

Sections

59.12.032 Unlawful detainer action—Compliance with RCW 61.24.040 and 61.24.060.

59.12.032 Unlawful detainer action—Compliance with RCW 61.24.040 and 61.24.060. An unlawful detainer action, commenced as a result of a trustee's sale under chapter 61.24 RCW, must comply with the requirements of RCW 61.24.040 and 61.24.060. [2009 c 292 § 11.]

Chapter 59.18 RCW

RESIDENTIAL LANDLORD-TENANT ACT

Sections

59.18.085 Rental of condemned or unlawful dwelling—Tenant's remedies—Relocation assistance—Penalties.
59.18.570 Victim protection—Definitions.
59.18.575 Victim protection—Notice to landlord—Termination of rental agreement—Procedures.
59.18.912 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. *(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*

59.18.085 Rental of condemned or unlawful dwelling—Tenant's remedies—Relocation assistance—Penalties. (1) If a governmental agency responsible for the enforcement of a building, housing, or other appropriate code has notified the landlord that a dwelling is condemned or unlawful to occupy due to the existence of conditions that violate applicable codes, statutes, ordinances, or regulations, a landlord shall not enter into a rental agreement for the dwelling unit until the conditions are corrected.

(2) If a landlord knowingly violates subsection (1) of this section, the tenant shall recover either three months' periodic rent or up to treble the actual damages sustained as a result of the violation, whichever is greater, costs of suit, or arbitration and reasonable attorneys' fees. If the tenant elects to terminate the tenancy as a result of the conditions leading to the posting, or if the appropriate governmental agency requires that the tenant vacate the premises, the tenant also shall recover:

(a) The entire amount of any deposit prepaid by the tenant; and

(b) All prepaid rent.

(3)(a) If a governmental agency responsible for the enforcement of a building, housing, or other appropriate code has notified the landlord that a dwelling will be condemned or will be unlawful to occupy due to the existence of conditions that violate applicable codes, statutes, ordinances, or regulations, a landlord, who knew or should have known of the existence of these conditions, shall be required to pay relocation assistance to the displaced tenants except that:

(i) A landlord shall not be required to pay relocation assistance to any displaced tenant in a case in which the condemnation or no occupancy order affects one or more dwelling units and directly results from conditions caused by a tenant's or any third party's illegal conduct without the landlord's prior knowledge;

(ii) A landlord shall not be required to pay relocation assistance to any displaced tenant in a case in which the condemnation or no occupancy order affects one or more dwelling units and results from conditions arising from a natural disaster such as, but not exclusively, an earthquake, tsunami, wind storm, or hurricane; and

(iii) A landlord shall not be required to pay relocation assistance to any displaced tenant in a case in which a condemnation affects one or more dwelling units and the tenant's displacement is a direct result of the acquisition of the property by eminent domain.

(b) Relocation assistance provided to displaced tenants under this subsection shall be the greater amount of two thousand dollars per dwelling unit or three times the monthly rent. In addition to relocation assistance, the landlord shall be required to pay to the displaced tenants the entire amount of any deposit prepaid by the tenant and all prepaid rent.

(c) The landlord shall pay relocation assistance and any prepaid deposit and prepaid rent to displaced tenants within seven days of the governmental agency sending notice of the condemnation, eviction, or displacement order to the landlord. The landlord shall pay relocation assistance and any prepaid deposit and prepaid rent either by making individual payments by certified check to displaced tenants or by providing a certified check to the governmental agency ordering condemnation, eviction, or displacement, for distribution to the displaced tenants. If the landlord fails to complete payment of relocation assistance within the period required under this subsection, the city, town, county, or municipal

corporation may advance the cost of the relocation assistance payments to the displaced tenants.

(d) During the period from the date that a governmental agency responsible for the enforcement of a building, housing, or other appropriate code first notifies the landlord of conditions that violate applicable codes, statutes, ordinances, or regulations to the time that relocation assistance payments are paid to eligible tenants, or the conditions leading to the notification are corrected, the landlord may not:

(i) Evict, harass, or intimidate tenants into vacating their units for the purpose of avoiding or diminishing application of this section;

(ii) Reduce services to any tenant; or

(iii) Materially increase or change the obligations of any tenant, including but not limited to any rent increase.

(e) Displaced tenants shall be entitled to recover any relocation assistance, prepaid deposits, and prepaid rent required by (b) of this subsection. In addition, displaced tenants shall be entitled to recover any actual damages sustained by them as a result of the condemnation, eviction, or displacement that exceed the amount of relocation assistance that is payable. In any action brought by displaced tenants to recover any payments or damages required or authorized by this subsection (3)(e) or (c) of this subsection that are not paid by the landlord or advanced by the city, town, county, or municipal corporation, the displaced tenants shall also be entitled to recover their costs of suit or arbitration and reasonable attorneys' fees.

(f) If, after sixty days from the date that the city, town, county, or municipal corporation first advanced relocation assistance funds to the displaced tenants, a landlord has failed to repay the amount of relocation assistance advanced by the city, town, county, or municipal corporation under (c) of this subsection, then the city, town, county, or municipal corporation shall assess civil penalties in the amount of fifty dollars per day for each tenant to whom the city, town, county, or municipal corporation has advanced a relocation assistance payment.

(g) In addition to the penalties set forth in (f) of this subsection, interest will accrue on the amount of relocation assistance paid by the city, town, county, or municipal corporation for which the property owner has not reimbursed the city, town, county, or municipal corporation. The rate of interest shall be the maximum legal rate of interest permitted under RCW 19.52.020, commencing thirty days after the date that the city, town, county, or municipal corporation first advanced relocation assistance funds to the displaced tenants.

(h) If the city, town, county, or municipal corporation must initiate legal action in order to recover the amount of relocation assistance payments that it has advanced to low-income tenants, including any interest and penalties under (f) and (g) of this subsection, the city, town, county, or municipal corporation shall be entitled to attorneys' fees and costs arising from its legal action.

(4) The governmental agency that has notified the landlord that a dwelling will be condemned or will be unlawful to occupy shall notify the displaced tenants that they may be entitled to relocation assistance under this section.

(5) No payment received by a displaced tenant under this section may be considered as income for the purpose of determining the eligibility or extent of eligibility of any person for assistance under any state law or for the purposes of any tax imposed under Title 82 RCW, and the payments shall not be deducted from any amount to which any recipient would otherwise be entitled under Title 74 RCW.

(6)(a) A person whose living arrangements are exempted from this chapter under RCW 59.18.040(3) and who has resided in or occupied one or more dwelling units within a hotel, motel, or other place of transient lodging for thirty or more consecutive days with the knowledge and consent of the owner of the hotel, motel, or other place of transient lodging, or any manager, clerk, or other agent representing the owner, is deemed to be a tenant for the purposes of this section and is entitled to receive relocation assistance under the circumstances described in subsection (2) or (3) of this section except that all relocation assistance and other payments shall be made directly to the displaced tenants.

(b) An interruption in occupancy primarily intended to avoid the application of this section does not affect the application of this section.

(c) An occupancy agreement, whether oral or written, in which the provisions of this section are waived is deemed against public policy and is unenforceable. [2009 c 165 § 1; 2005 c 364 § 2; 1989 c 342 § 13.]

Purpose—2005 c 364: "The people of the state of Washington deserve decent, safe, and sanitary housing. Certain tenants in the state of Washington have remained in rental housing that does not meet the state's minimum standards for health and safety because they cannot afford to pay the costs of relocation in advance of occupying new, safe, and habitable housing. In egregious cases, authorities have been forced to condemn property when landlords have failed to remedy building code or health code violations after repeated notice, and, as a result, families with limited financial resources have been displaced and left with nowhere to go.

The purpose of this act is to establish a process by which displaced tenants would receive funds for relocation from landlords who fail to provide safe and sanitary housing after due notice of building code or health code violations. It is also the purpose of this act to provide enforcement mechanisms to cities, towns, counties, or municipal corporations including the ability to advance relocation funds to tenants who are displaced as a result of a landlord's failure to remedy building code or health code violations and later to collect the full amounts of these relocation funds, along with interest and penalties, from landlords." [2005 c 364 § 1.]

Construction—2005 c 364: "The powers and authority conferred by this act are in addition and supplemental to powers or authority conferred by any other law or authority, and nothing contained herein shall be construed to preempt any local ordinance requiring relocation assistance to tenants displaced by a landlord's failure to remedy building code or health code violations." [2005 c 364 § 4.]

59.18.570 Victim protection—Definitions. The definitions in this section apply throughout this section and RCW 59.18.575 through 59.18.585 unless the context clearly requires otherwise.

(1) "Credit reporting agency" has the same meaning as set forth in RCW 19.182.010(5).

(2) "Domestic violence" has the same meaning as set forth in RCW 26.50.010.

(3) "Household member" means a child or adult residing with the tenant other than the perpetrator of domestic violence, stalking, or sexual assault.

(4) "Landlord" has the same meaning as in RCW 59.l8.030 and includes the landlord's employees.

(5) "Qualified third party" means any of the following people acting in their official capacity:

(a) Law enforcement officers;

(b) Persons subject to the provisions of chapter 18.120 RCW;

(c) Employees of a court of the state;

(d) Licensed mental health professionals or other licensed counselors;

(e) Employees of crime victim/witness programs as defined in RCW 7.69.020 who are trained advocates for the program; and

(f) Members of the clergy as defined in RCW 26.44.020.

(6) "Sexual assault" has the same meaning as set forth in RCW 70.125.030.

(7) "Stalking" has the same meaning as set forth in RCW 9A.46.110.

(8) "Tenant screening service provider" means any nongovernmental agency that provides, for a fee, background information on prospective tenants to landlords.

(9) "Unlawful harassment" has the same meaning as in RCW 10.14.020 and also includes any request for sexual favors to a tenant or household member in return for a change in or performance of any or all terms of a lease or rental agreement. [2009 c 395 § 1; 2004 c 17 § 2.]

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

Findings—Intent—2004 c 17: "The legislature finds and declares that:

(1) Domestic violence, sexual assault, and stalking are widespread societal problems that have devastating effects for individual victims, their children, and their communities. Victims of violence may be forced to remain in unsafe situations because they are bound by residential lease agreements. The legislature finds that the inability of victims to terminate their rental agreements hinders or prevents victims from being able to safely flee domestic violence, sexual assault, or stalking. The legislature further finds that victims of these crimes who do not have access to safe housing are more likely to remain in or return to abusive or dangerous situations. Also, the legislature finds that victims of these crimes are further victimized when they are unable to obtain or retain rental housing due to their history as a victim of these crimes. The legislature further finds that evidence that a prospective tenant has been a victim of domestic violence, sexual assault, or stalking is not relevant to the decision whether to rent to that prospective tenant.

(2) By this act, the legislature intends to increase safety for victims of domestic violence, sexual assault, and stalking by removing barriers to safety and offering protection against discrimination." [2004 c 17 § 1.]

Effective date—2004 c 17: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 15, 2004]." [2004 c 17 § 7.]

59.18.575 Victim protection—Notice to landlord—Termination of rental agreement—Procedures. (1)(a) If a tenant notifies the landlord in writing that he or she or a household member was a victim of an act that constitutes a crime of domestic violence, sexual assault, unlawful harassment, or stalking, and either (a)(i) or (ii) of this subsection applies, then subsection (2) of this section applies:

(i) The tenant or the household member has a valid order for protection under one or more of the following: Chapter 7.90, 26.50, or 26.26 RCW or RCW 9A.46.040, 9A.46.050, 10.14.080, 10.99.040 (2) or (3), or 26.09.050; or

(ii) The tenant or the household member has reported the domestic violence, sexual assault, unlawful harassment, or stalking to a qualified third party acting in his or her official capacity and the qualified third party has provided the tenant or the household member a written record of the report signed by the qualified third party.

(b) When a copy of a valid order for protection or a written record of a report signed by a qualified third party, as required under (a) of this subsection, is made available to the landlord, the tenant may terminate the rental agreement and quit the premises without further obligation under the rental agreement or under chapter 59.18 RCW. However, the request to terminate the rental agreement must occur within ninety days of the reported act, event, or circumstance that gave rise to the protective order or report to a qualified third party. A record of the report to a qualified third party that is provided to the tenant or household member shall consist of a document signed and dated by the qualified third party stating: (i) That the tenant or the household member notified him or her that he or she was a victim of an act or acts that constitute a crime of domestic violence, sexual assault, unlawful harassment, or stalking; (ii) the time and date the act or acts occurred; (iii) the location where the act or acts occurred; (iv) a brief description of the act or acts of domestic violence, sexual assault, unlawful harassment, or stalking; and (v) that the tenant or household member informed him or her of the name of the alleged perpetrator of the act or acts. The record of the report provided to the tenant or household member shall not include the name of the alleged perpetrator of the act or acts of domestic violence, sexual assault, unlawful harassment, or stalking. The qualified third party shall keep a copy of the record of the report and shall note on the retained copy the name of the alleged perpetrator of the act or acts of domestic violence, sexual assault, unlawful harassment, or stalking. The record of the report to a qualified third party may be accomplished by completion of a form provided by the qualified third party, in substantially the following form:

. . . . . .

[Name of organization, agency, clinic, professional service provider]

I and/or my . . . . . (household member) am/is a victim of

. . . domestic violence as defined by RCW 26.50.010.

. . . sexual assault as defined by RCW 70.125.030.

. . . stalking as defined by RCW 9A.46.110.

. . . unlawful harassment as defined by RCW 59.18.570.

Briefly describe the incident of domestic violence, sexual assault, unlawful harassment, or stalking:. . . . . .

. . . . . .

The incident(s) that I rely on in support of this declaration occurred on the following date(s) and time(s) and at the following location(s): . . . . . .

The incident(s) that I rely on in support of this declaration were committed by the following person(s): . . . . . .

. . . . . .

I state under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct. Dated at . . . . . (city) . ., Washington, this . . . day of . . . ., 20. ..

. . . . . .
Signature of Tenant or Household Member

I verify that I have provided to the person whose signature appears above the statutes cited in RCW 59.18.575 and that the individual was a victim of an act that constitutes a crime of domestic violence, sexual assault, unlawful harassment, or stalking, and that the individual informed me of the name of the alleged perpetrator of the act.
Dated this . . . day of . . . ., 20. ..

. . . . . .
Signature of authorized officer/employee of (Organization, agency, clinic, professional service provider)

(2) A tenant who terminates a rental agreement under this section is discharged from the payment of rent for any period following the last day of the month of the quitting date. The tenant shall remain liable for the rent for the month in which he or she terminated the rental agreement unless the termination is in accordance with RCW 59.18.200(1). Notwithstanding lease provisions that allow for forfeiture of a deposit for early termination, a tenant who terminates under this section is entitled to the return of the full deposit, subject to RCW 59.18.020 and 59.18.280. Other tenants who are parties to the rental agreement, except household members who are the victims of sexual assault, stalking, unlawful harassment, or domestic violence, are not released from their obligations under the rental agreement or other obligations under this chapter.

(3)(a) Notwithstanding any other provision under this section, if a tenant or a household member is a victim of sexual assault, stalking, or unlawful harassment by a landlord, the tenant may terminate the rental agreement and quit the premises without further obligation under the rental agreement or under this chapter prior to making a copy of a valid order for protection or a written record of a report signed by a qualified third party available to the landlord, provided that:

(i) The tenant must deliver a copy of a valid order for protection or written record of a report signed by a qualified third party to the landlord by mail, fax, or personal delivery by a third party within seven days of quitting the tenant's dwelling unit; and

(ii) A written record of a report signed by the qualified third party must be substantially in the form specified under subsection (1)(b) of this section. The record of the report provided to the landlord must not include the name of the alleged perpetrator of the act. On written request by the landlord, the qualified third party shall, within seven days, provide the name of the alleged perpetrator of the act to the landlord only if the alleged perpetrator was a person meeting the definition of the term "landlord" under RCW 59.18.570.

(b) A tenant who terminates his or her rental agreement under this subsection is discharged from the payment of rent for any period following the latter of: (i) The date the tenant vacates the unit; or (ii) the date the record of the report of the qualified third party and the written notice that the tenant has vacated are delivered to the landlord by mail, fax, or personal delivery by a third party. The tenant is entitled to a pro rata refund of any prepaid rent and must receive a full and specific statement of the basis for retaining any of the deposit together with any refund due in accordance with RCW 59.18.280.

(4) If a tenant or a household member is a victim of sexual assault, stalking, or unlawful harassment by a landlord, the tenant may change or add locks to the tenant's dwelling unit at the tenant's expense. If a tenant exercises his or her rights to change or add locks, the following rules apply:

(a) Within seven days of changing or adding locks, the tenant must deliver to the landlord by mail, fax, or personal delivery by a third party: (i) Written notice that the tenant has changed or added locks; and (ii) a copy of a valid order for protection or a written record of a report signed by a qualified third party. A written record of a report signed by a qualified third party must be substantially in the form specified under subsection (1)(b) of this section. The record of the report provided to the landlord must not include the name of the alleged perpetrator of the act. On written request by the landlord, the qualified third party shall, within seven days, provide the name of the alleged perpetrator to the landlord only if the alleged perpetrator was a person meeting the definition of the term "landlord" under RCW 59.18.570.

(b) After the tenant provides notice to the landlord that the tenant has changed or added locks, the tenant's rental agreement shall terminate on the ninetieth day after providing such notice, unless:

(i) Within sixty days of providing notice that the tenant has changed or added locks, the tenant notifies the landlord in writing that the tenant does not wish to terminate his or her rental agreement. If the perpetrator has been identified by the qualified third party and is no longer an employee or agent of the landlord or owner and does not reside at the property, the tenant shall provide the owner or owner's designated agent with a copy of the key to the new locks at the same time as providing notice that the tenant does not wish to terminate his or her rental agreement. A tenant who has a valid protection, antiharassment, or other protective order against the owner of the premises or against an employee or agent of the landlord or owner is not required to provide a key to the new locks until the protective order expires or the tenant vacates; or

(ii) The tenant exercises his or her rights to terminate the rental agreement under subsection (3) of this section within sixty days of providing notice that the tenant has changed or added locks.

(c) After a landlord receives notice that a tenant has changed or added locks to his or her dwelling unit under (a) of this subsection, the landlord may not enter the tenant's dwelling unit except as follows:

(i) In the case of an emergency, the landlord may enter the unit if accompanied by a law enforcement or fire official acting in his or her official capacity. If the landlord reasonably concludes that the circumstances require immediate entry into the unit, the landlord may, after notifying emergency services, use such force as necessary to enter the unit if the tenant is not present; or

(ii) The landlord complies with the requirements of RCW 59.18.150 and clearly specifies in writing the time and date that the landlord intends to enter the unit and the purpose for entering the unit. The tenant must make arrangements to permit access by the landlord.

(d) The exercise of rights to change or add locks under this subsection does not discharge the tenant from the payment of rent until the rental agreement is terminated and the tenant vacates the unit.

(e) The tenant may not change any locks to common areas and must make keys for new locks available to other household members.

(f) Upon vacating the dwelling unit, the tenant must deliver the key and all copies of the key to the landlord by mail or personal delivery by a third party.

(5) A tenant's remedies under this section do not preempt any other legal remedy available to the tenant.

(6) The provision of verification of a report under subsection (1)(b) of this section does not waive the confidential or privileged nature of the communication between a victim of domestic violence, sexual assault, or stalking with a qualified third party pursuant to RCW 5.60.060, 70.123.075, or 70.125.065. No record or evidence obtained from such disclosure may be used in any civil, administrative, or criminal proceeding against the victim unless a written waiver of applicable evidentiary privilege is obtained, except that the verification itself, and no other privileged information, under subsection (1)(b) of this section may be used in civil proceedings brought under this section. [2009 c 395 § 2; 2006 c 138 § 27; 2004 c 17 § 3.]

Short title—2006 c 138: See RCW 7.90.900.

Findings—Intent—Effective date—2004 c 17: See notes following RCW 59.18.570.

59.18.912 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. ***(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 139.]

Chapter 59.20 RCW
MANUFACTURED/MOBILE HOME LANDLORD-TENANT ACT

Sections

59.20.902 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. *(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*

59.20.902 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. ***(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 140.]

Chapter 59.21 RCW
MOBILE HOME RELOCATION ASSISTANCE

Sections

59.21.010 Definitions.
59.21.906 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. *(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*

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

(1) "Department" means the department of commerce.

(2) "Director" means the director of the department of commerce.

(3) "Fund" means the mobile home park relocation fund established under RCW 59.21.050.

(4) "Landlord" or "park-owner" means the owner of the mobile home park that is being closed at the time relocation assistance is provided.

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

(6) "Relocate" means to remove the mobile home from the mobile home park being closed and to either reinstall it in another location or to demolish it and purchase another mobile/manufactured home constructed to the standards set by the department of housing and urban development.

(7) "Relocation assistance" means the monetary assistance provided under this chapter. [2009 c 565 § 47; 2002 c 257 § 1; 1998 c 124 § 1; 1995 c 122 § 3; 1991 c 327 § 10; 1990 c 171 § 1; 1989 c 201 § 1.]

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

Effective date—2002 c 257: "This act takes effect January 1, 2003." [2002 c 257 § 5.]

59.21.906 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. ***(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*** For the purposes of this

chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 141.]

Chapter 59.22 RCW

OFFICE OF MANUFACTURED HOUSING—RESIDENT-OWNED MOBILE HOME PARKS

Sections

59.22.020 Definitions.
59.22.901 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. *(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*

59.22.020 Definitions. The following definitions shall apply throughout this chapter unless the context clearly requires otherwise:

(1) "Account" means the manufactured housing account created under RCW 59.22.070.

(2) "Affordable" means that, where feasible, low-income residents should not pay more than thirty percent of their monthly income for housing costs.

(3) "Conversion costs" includes the cost of acquiring the mobile home park, the costs of planning and processing the conversion, the costs of any needed repairs or rehabilitation, and any expenditures required by a government agency or lender for the project.

(4) "Department" means the department of commerce.

(5) "Fee" means the mobile home title transfer fee imposed under RCW 59.22.080.

(6) "Fund" or "park purchase account" means the mobile home park purchase account created pursuant to RCW 59.22.030.

(7) "Housing costs" means the total cost of owning, occupying, and maintaining a mobile home and a lot or space in a mobile home park.

(8) "Individual interest in a mobile home park" means any interest which is fee ownership or a lesser interest which entitles the holder to occupy a lot or space in a mobile home park for a period of not less than either fifteen years or the life of the holder. Individual interests in a mobile home park include, but are not limited to, the following:

(a) Ownership of a lot or space in a mobile home park or subdivision;

(b) A membership or shares in a stock cooperative, or a limited equity housing cooperative; or

(c) Membership in a nonprofit mutual benefit corporation which owns, operates, or owns and operates the mobile home park.

(9) "Landlord" shall have the same meaning as it does in RCW 59.20.030.

(10) "Low-income resident" means an individual or household who resided in the mobile home park prior to application for a loan pursuant to this chapter and with an annual income at or below eighty percent of the median income for the county of standard metropolitan statistical area of residence. Net worth shall be considered in the calculation of income with the exception of the resident's mobile/manufactured home which is used as their primary residence.

(11) "Low-income spaces" means those spaces in a mobile home park operated by a resident organization which are occupied by low-income residents.

(12) "Manufactured housing" means residences constructed on one or more chassis for transportation, and which bear an insignia issued by a state or federal regulatory agency indication compliance with all applicable construction standards of the United States department of housing and urban development.

(13) "Mobile home" shall have the same meaning as it does in RCW 46.04.302.

(14) "Mobile home lot" shall have the same meaning as it does in RCW 59.20.030.

(15) "Mobile home park" means a mobile home park, as defined in RCW 59.20.030(10), or a manufactured home park subdivision as defined by RCW 59.20.030(12) created by the conversion to resident ownership of a mobile home park.

(16) "Resident organization" means a group of mobile home park residents who have formed a nonprofit corporation, cooperative corporation, or other entity or organization for the purpose of acquiring the mobile home park in which they reside and converting the mobile home park to resident ownership. The membership of a resident organization shall include at least two-thirds of the households residing in the mobile home park at the time of application for assistance from the department.

(17) "Resident ownership" means, depending on the context, either the ownership, by a resident organization, as defined in this section, of an interest in a mobile home park which entitles the resident organization to control the operations of the mobile home park for a term of no less than fifteen years, or the ownership of individual interests in a mobile home park, or both.

(18) "Tenant" means a person who rents a mobile home lot for a term of one month or longer and owns the mobile home on the lot. [2009 c 565 § 48; 1995 c 399 § 155; 1993 c 66 § 9; 1991 c 327 § 2; 1988 c 280 § 3; 1987 c 482 § 2.]

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

59.22.901 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. ***(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state

registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 142.]

Title 60

LIENS

Chapters

60.28 Lien for labor, materials, taxes on public works.

Chapter 60.28 RCW

LIEN FOR LABOR, MATERIALS, TAXES ON PUBLIC WORKS

Sections

60.28.010 Repealed.
60.28.011 Retained percentage—Labor and material lien created—Bond in lieu of retained funds—Termination before completion—Chapter deemed exclusive—Release of ferry contract payments—Projects of farmers home administration—General contractor/construction manager procedure—Definitions.
60.28.020 Repealed.
60.28.021 Excess over lien claims paid to contractor.
60.28.040 Tax liens—Priority of liens *(as amended by 2009 c 219)*.
60.28.040 Tax liens—Priority of liens *(as amended by 2009 c 432)*.
60.28.050 Repealed.
60.28.051 Duties of disbursing officer upon completion of contract.
60.28.060 Duties of disbursing officer upon final acceptance of contract—Request of payment of taxes, increases, penalties, and claims.
60.28.080 Delay due to litigation—Change order or force account directive—Costs—Arbitration—Termination.

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

60.28.011 Retained percentage—Labor and material lien created—Bond in lieu of retained funds—Termination before completion—Chapter deemed exclusive—Release of ferry contract payments—Projects of farmers home administration—General contractor/construction manager procedure—Definitions. (1) Public improvement contracts shall provide, and public bodies shall reserve, a contract retainage not to exceed five percent of the moneys earned by the contractor as a trust fund for the protection and payment of: (a) The claims of any person arising under the contract; and (b) the state with respect to taxes imposed pursuant to Titles 50, 51, and 82 RCW which may be due from such contractor.

(2) Every person performing labor or furnishing supplies toward the completion of a public improvement contract shall have a lien upon moneys reserved by a public body under the provisions of a public improvement contract. However, the notice of the lien of the claimant shall be given within forty-five days of completion of the contract work, and in the manner provided in RCW 39.08.030.

(3) The contractor at any time may request the contract retainage be reduced to one hundred percent of the value of the work remaining on the project.

(a) After completion of all contract work other than landscaping, the contractor may request that the public body release and pay in full the amounts retained during the performance of the contract, and sixty days thereafter the public body must release and pay in full the amounts retained (other than continuing retention of five percent of the moneys earned for landscaping) subject to the provisions of chapters 39.12 and 60.28 RCW.

(b) Sixty days after completion of all contract work the public body must release and pay in full the amounts retained during the performance of the contract subject to the provisions of chapters 39.12 and 60.28 RCW.

(4) The moneys reserved by a public body under the provisions of a public improvement contract, at the option of the contractor, shall be:

(a) Retained in a fund by the public body;

(b) Deposited by the public body in an interest bearing account in a bank, mutual savings bank, or savings and loan association. Interest on moneys reserved by a public body under the provision of a public improvement contract shall be paid to the contractor;

(c) Placed in escrow with a bank or trust company by the public body. When the moneys reserved are placed in escrow, the public body shall issue a check representing the sum of the moneys reserved payable to the bank or trust company and the contractor jointly. This check shall be converted into bonds and securities chosen by the contractor and approved by the public body and the bonds and securities shall be held in escrow. Interest on the bonds and securities shall be paid to the contractor as the interest accrues.

(5) The contractor or subcontractor may withhold payment of not more than five percent from the moneys earned by any subcontractor or sub-subcontractor or supplier contracted with by the contractor to provide labor, materials, or equipment to the public project. Whenever the contractor or subcontractor reserves funds earned by a subcontractor or sub-subcontractor or supplier, the contractor or subcontractor shall pay interest to the subcontractor or sub-subcontractor or supplier at a rate equal to that received by the contractor or subcontractor from reserved funds.

(6) A contractor may submit a bond for all or any portion of the contract retainage in a form acceptable to the public body and from a bonding company meeting standards established by the public body. The public body shall accept a bond meeting these requirements unless the public body can demonstrate good cause for refusing to accept it. This bond and any proceeds therefrom are subject to all claims and liens and in the same manner and priority as set forth for retained percentages in this chapter. The public body shall release the bonded portion of the retained funds to the contractor within thirty days of accepting the bond from the contractor. Whenever a public body accepts a bond in lieu of retained funds from a contractor, the contractor shall accept like bonds from any subcontractors or suppliers from which the contractor has retained funds. The contractor shall then release the funds retained from the subcontractor or supplier to the subcontractor or supplier within thirty days of accepting the bond from the subcontractor or supplier.

(7) If the public body administering a contract, after a substantial portion of the work has been completed, finds that an unreasonable delay will occur in the completion of the remaining portion of the contract for any reason not the result of a breach thereof, it may, if the contractor agrees, delete from the contract the remaining work and accept as final the improvement at the stage of completion then attained and make payment in proportion to the amount of the work accomplished and in this case any amounts retained and accumulated under this section shall be held for a period of sixty days following the completion. In the event that the work is terminated before final completion as provided in this section, the public body may thereafter enter into a new contract with the same contractor to perform the remaining work or improvement for an amount equal to or less than the cost of the remaining work as was provided for in the original contract without advertisement or bid. The provisions of this chapter are exclusive and shall supersede all provisions and regulations in conflict herewith.

(8) Whenever the department of transportation has contracted for the construction of two or more ferry vessels, sixty days after completion of all contract work on each ferry vessel, the department must release and pay in full the amounts retained in connection with the construction of the vessel subject to the provisions of RCW 60.28.021 and chapter 39.12 RCW. However, the department of transportation may at its discretion condition the release of funds retained in connection with the completed ferry upon the contractor delivering a good and sufficient bond with two or more sureties, or with a surety company, in the amount of the retained funds to be released to the contractor, conditioned that no taxes shall be certified or claims filed for work on the ferry after a period of sixty days following completion of the ferry; and if taxes are certified or claims filed, recovery may be had on the bond by the department of revenue, the employment security department, the department of labor and industries, and the material suppliers and laborers filing claims.

(9) Except as provided in subsection (1) of this section, reservation by a public body for any purpose from the moneys earned by a contractor by fulfilling its responsibilities under public improvement contracts is prohibited.

(10) Contracts on projects funded in whole or in part by farmers home administration and subject to farmers home administration regulations are not subject to subsections (1) through (9) of this section.

(11) This subsection applies only to a public body that has contracted for the construction of a facility using the general contractor/construction manager procedure, as defined under RCW 39.10.210. If the work performed by a subcontractor on the project has been completed within the first half of the time provided in the general contractor/construction manager contract for completing the work, the public body may accept the completion of the subcontract. The public body must give public notice of this acceptance. After a forty-five day period for giving notice of liens, and compliance with the retainage release procedures in RCW 60.28.021, the public body may release that portion of the retained funds associated with the subcontract. Claims against the retained funds after the forty-five day period are not valid.

(12) Unless the context clearly requires otherwise, the definitions in this subsection apply throughout this section.

(a) "Contract retainage" means an amount reserved by a public body from the moneys earned by a person under a public improvement contract.

(b) "Person" means a person or persons, mechanic, subcontractor, or materialperson who performs labor or provides materials for a public improvement contract, and any other person who supplies the person with provisions or supplies for the carrying on of a public improvement contract.

(c) "Public body" means the state, or a county, city, town, district, board, or other public body.

(d) "Public improvement contract" means a contract for public improvements or work, other than for professional services, or a work order as defined in RCW 39.10.210. [2009 c 432 § 5; 2009 c 219 § 6. Prior: 2007 c 494 § 504; 2007 c 218 § 92; 2003 c 301 § 7; 2000 c 185 § 1; 1994 c 101 § 1; 1992 c 223 § 2.]

Reviser's note: This section was amended by 2009 c 219 § 6 and by 2009 c 432 § 5, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Report—2009 c 432: See note following RCW 18.27.062.

Part headings and captions not law—Effective dates—Severability—2007 c 494: See RCW 39.10.903 through 39.10.905.

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

Effective date—1992 c 223: See note following RCW 39.76.011.

Waiver of rights, construction—Application—1992 c 223: See RCW 39.04.900 and 39.04.901.

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

60.28.021 Excess over lien claims paid to contractor. After the expiration of the forty-five day period for giving notice of lien provided in RCW 60.28.011(2), and after receipt of the certificates of the department of revenue, the employment security department, and the department of labor and industries, and the public body is satisfied that the taxes certified as due or to become due by the department of revenue, the employment security department, and the department of labor and industries are discharged, and the claims of material suppliers and laborers who have filed their claims, together with a sum sufficient to defray the cost of foreclosing the liens of such claims, and to pay attorneys' fees, have been paid, the public body may withhold from the remaining retained amounts for claims the public body may have against the contractor and shall pay the balance, if any, to the contractor the fund retained by it or release to the contractor the securities and bonds held in escrow.

If such taxes have not been discharged or the claims, expenses, and fees have not been paid, the public body shall either retain in its fund, or in an interest bearing account, or retain in escrow, at the option of the contractor, an amount equal to such unpaid taxes and unpaid claims together with a sum sufficient to defray the costs and attorney fees incurred in foreclosing the lien of such claims, and shall pay, or release from escrow, the remainder to the contractor. [2009 c 432 § 6; 2007 c 218 § 94; 1992 c 223 § 3.]

Report—2009 c 432: See note following RCW 18.27.062.

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

Effective date—1992 c 223: See note following RCW 39.76.011.

Waiver of rights, construction—Application—1992 c 223: See RCW 39.04.900 and 39.04.901.

60.28.040 Tax liens—Priority of liens *(as amended by 2009 c 219)*. The amount of all taxes, increases and penalties due or to become due under Title 82 RCW, from a contractor or the contractor's successors or assignees with respect to a public improvement contract wherein the contract price is ((~~twenty~~)) thirty-five thousand dollars or more shall be a lien prior to all other liens upon the amount of the retained percentage withheld by the disbursing officer under such contract, except that the employees of a contractor or the contractor's successors or assignees who have not been paid the prevailing wage under such a public improvement contract shall have a first priority lien against the bond or retainage prior to all other liens. The amount of all other taxes, increases and penalties due and owing from the contractor shall be a lien upon the balance of such retained percentage remaining in the possession of the disbursing officer after all other statutory lien claims have been paid. [2009 c 219 § 7; 1985 c 80 § 1; 1971 ex.s. c 299 § 1; 1955 c 236 § 4. Prior: 1949 c 228 § 27, part; Rem. Supp. 1949 § 8370-204a, part; RCW 82.32.250, part.]

60.28.040 Tax liens—Priority of liens *(as amended by 2009 c 432)*. (1) Subject to subsection (5) of this section, the amount of all taxes, increases, and penalties due or to become due under Title 82 RCW, from a contractor or the contractor's successors or assignees with respect to a public improvement contract wherein the contract price is twenty thousand dollars or more, shall be a lien prior to all other liens upon the amount of the retained percentage withheld by the disbursing officer under such contract((~~, except that~~)).

(2) Subject to subsection (5) of this section, after payment of all taxes, increases, and penalties due or to become due under Title 82 RCW, from a contractor or the contractor's successors or assignees with respect to a public improvement contract wherein the contract price is twenty thousand dollars or more, the amount of all other taxes, increases, and penalties under Title 82 RCW, due and owing from the contractor, shall be a lien prior to all other liens upon the amount of the retained percentage withheld by the disbursing officer under such contract.

(3) Subject to subsection (5) of this section, after payment of all taxes, increases, and penalties due or to become due under Title 82 RCW, the amount of all taxes, increases, and penalties due or to become due under Titles 50 and 51 RCW from the contractor or the contractor's successors or assignees with respect to a public improvement contract wherein the contract price is twenty thousand dollars or more shall be a lien prior to all other liens upon the amount of the retained percentage withheld by the disbursing officer under such contract.

(4) Subject to subsection (5) of this section, the amount of all other taxes, increases, and penalties due and owing from the contractor shall be a lien upon the balance of such retained percentage remaining in the possession of the disbursing officer after all other statutory lien claims have been paid.

(5) The employees of a contractor or the contractor's successors or assignees who have not been paid the prevailing wage under such a public improvement contract shall have a first priority lien against the bond or retainage prior to all other liens. ((~~The amount of all other taxes, increases and penalties due and owing from the contractor shall be a lien upon the balance of such retained percentage remaining in the possession of the disbursing officer after all other statutory lien claims have been paid.~~)) [2009 c 432 § 7; 1985 c 80 § 1; 1971 ex.s. c 299 § 1; 1955 c 236 § 4. Prior: 1949 c 228 § 27, part; Rem. Supp. 1949 § 8370-204a, part; RCW 82.32.250, part.]

Reviser's note: RCW 60.28.040 was amended twice during the 2009 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

Report—2009 c 432: See note following RCW 18.27.062.

Severability—Effective dates—1971 ex.s. c 299: See notes following RCW 82.04.050.

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

60.28.051 Duties of disbursing officer upon completion of contract. Upon completion of a contract, the state, county, or other municipal officer charged with the duty of disbursing or authorizing disbursement or payment of such contracts shall forthwith notify the department of revenue, the employment security department, and the department of labor and industries of the completion of contracts over thirty-five thousand dollars. Such officer shall not make any payment from the retained percentage fund or release any retained percentage escrow account to any person, until he or she has received from the department of revenue, the employment security department, and the department of labor and industries certificates that all taxes, increases, and penalties due from the contractor, and all taxes due and to become due with respect to such contract have been paid in full or that they are, in each department's opinion, readily collectible without recourse to the state's lien on the retained percentage. [2009 c 432 § 8; 2007 c 210 § 2; 1992 c 223 § 4.]

Report—2009 c 432: See note following RCW 18.27.062.

Effective date—1992 c 223: See note following RCW 39.76.011.

Waiver of rights, construction—Application—1992 c 223: See RCW 39.04.900 and 39.04.901.

60.28.060 Duties of disbursing officer upon final acceptance of contract—Request of payment of taxes, increases, penalties, and claims. If within thirty days after receipt of notice by the department of revenue, the employment security department, and the department of labor and industries of the completion of the contract, the amount of all taxes, increases and penalties due from the contractor or any of his successors or assignees or to become due with respect to such contract have not been paid, the department of revenue, the employment security department, and the department of labor and industries may certify to the disbursing officer the amount of all taxes, increases and penalties due from the contractor, together with the amount of all taxes due and to become due with respect to the contract and may request payment thereof in accordance with the priority provided by this chapter. The disbursing officer shall within ten days after receipt of such certificate and request pay to the department of revenue, the employment security department, and the department of labor and industries the amount of all taxes, increases and penalties certified to be due or to become due and all claims which by statute are a lien upon the retained percentage withheld by the disbursing officer in accordance with the priority provided by this chapter. If the contractor owes no taxes imposed pursuant to Titles 50, 51, and 82 RCW, the department of revenue, the employment security department, and the department of labor and industries shall so certify to the disbursing officer. [2009 c 432 § 9; 1967 ex.s. c 26 § 25; 1955 c 236 § 6. Prior: 1949 c 228 § 27, part; Rem. Supp. 1949 § 8370-204a, part; RCW 82.32.250, part.]

Report—2009 c 432: See note following RCW 18.27.062.

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

60.28.080 Delay due to litigation—Change order or force account directive—Costs—Arbitration—Termination. (1) If any delay in issuance of notice to proceed or in construction following an award of any public construction contract is primarily caused by acts or omissions of persons or agencies other than the contractor and a preliminary, spe-

cial or permanent restraining order of a court of competent jurisdiction is issued pursuant to litigation and the appropriate public contracting body does not elect to delete the completion of the contract as provided by RCW 60.28.011(7), the appropriate contracting body will issue a change order or force account directive to cover reasonable costs incurred by the contractor as a result of such delay. These costs shall include but not be limited to contractor's costs for wages, labor costs other than wages, wage taxes, materials, equipment rentals, insurance, bonds, professional fees, and subcontracts, attributable to such delay plus a reasonable sum for overhead and profit.

In the event of a dispute between the contracting body and the contractor, arbitration procedures may be commenced under the applicable terms of the construction contract, or, if the contract contains no such provision for arbitration, under the then obtaining rules of the American Arbitration Association.

If the delay caused by litigation exceeds six months, the contractor may then elect to terminate the contract and to delete the completion of the contract and receive payment in proportion to the amount of the work completed plus the cost of the delay. Amounts retained and accumulated under RCW 60.28.011 shall be held for a period of forty-five days following the election of the contractor to terminate. Election not to terminate the contract by the contractor shall not affect the accumulation of costs incurred as a result of the delay provided above.

(2) This section shall not apply to any contract awarded pursuant to an invitation for bid issued on or before July 16, 1973. [2009 c 219 § 8; 1982 c 170 § 3; 1973 1st ex.s. c 62 § 3.]

Severability—1973 1st ex.s. c 62: See note following RCW 39.04.120.

Change orders due to environmental protection requirements, costs: RCW 39.04.120.

Title 61

MORTGAGES, DEEDS OF TRUST, AND REAL ESTATE CONTRACTS

Chapters

61.12 Foreclosure of real estate mortgages and personal property liens.
61.24 Deeds of trust.
61.34 Distressed property conveyances.

Chapter 61.12 RCW
FORECLOSURE OF REAL ESTATE MORTGAGES AND PERSONAL PROPERTY LIENS

Sections

61.12.150 Sale of whole property—Disposition of proceeds.

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

Chapter 61.24 RCW
DEEDS OF TRUST

Sections

61.24.005 Definitions.
61.24.010 Trustee, qualifications—Successor trustee.
61.24.030 Requisites to trustee's sale.
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61.24.005 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

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

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

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

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

(5) "Fair value" means the value of the property encumbered by a deed of trust that is sold pursuant to a trustee's sale. This value shall be determined by the court or other appropriate adjudicator by reference to the most probable price, as of the date of the trustee's sale, which would be paid in cash or other immediately available funds, after deduction of prior liens and encumbrances with interest to the date of the trustee's sale, for which the property would sell on such date after reasonable exposure in the market under conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably, and for self-interest, and assuming that neither is under duress.

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

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

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

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

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

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

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

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

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

61.24.010 Trustee, qualifications—Successor trustee. (1) The trustee of a deed of trust under this chapter shall be:

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

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

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

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

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

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

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

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

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

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

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

(2) That the deed of trust contains a statement that the real property conveyed is not used principally for agricultural purposes; provided, if the statement is false on the date the deed of trust was granted or amended to include that statement, and false on the date of the trustee's sale, then the deed of trust must be foreclosed judicially. Real property is used for agricultural purposes if it is used in an operation that produces crops, livestock, or aquatic goods;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Can you pay and stop the foreclosure process?

Do you dispute the failure to pay?

Can you sell your property to preserve your equity?

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

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

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

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

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

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

Findings—2008 c 108: See RCW 19.144.005.

Application—1985 c 193: See note following RCW 61.24.020.

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

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

(c) During the initial contact, the beneficiary or authorized agent shall advise the borrower that he or she has the right to request a subsequent meeting and, if requested, the beneficiary or authorized agent shall schedule the meeting to occur within fourteen days of the request. The assessment of the borrower's financial ability to repay the debt and a discus-

sion of options may occur during the initial contact or at a subsequent meeting scheduled for that purpose. At the initial contact, the borrower must be provided the toll-free telephone number made available by the department to find a department-certified housing counseling agency and the toll-free numbers for the department of financial institutions and the statewide civil legal aid hotline for possible assistance and referrals.

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

(2) A notice of default issued under RCW 61.24.030(8) must include a declaration, as provided in subsection (9) of this section, from the beneficiary or authorized agent that it has contacted the borrower as provided in subsection (1)(b) of this section, it has tried with due diligence to contact the borrower under subsection (5) of this section, or the borrower has surrendered the property to the trustee, beneficiary, or authorized agent. Unless the trustee has violated his or her duty under RCW 61.24.010(4), the trustee is entitled to rely on the declaration as evidence that the requirements of this section have been satisfied, and the trustee is not liable for the beneficiary's or its authorized agent's failure to comply with the requirements of this section.

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

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

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

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

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

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

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

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

(c) If the borrower does not respond within fourteen days after the telephone call requirements of (b) of this subsection have been satisfied, the beneficiary or authorized agent shall send a certified letter, with return receipt requested, to the borrower at the address in the beneficiary's records for sending account statements to the borrower and to the address of the property encumbered by the deed of trust. The letter must include the information described in (e)(i) through (iv) of this subsection.

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

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

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

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

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

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

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

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

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

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

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

(8) As used in this section:

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

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

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

"FORECLOSURE LOSS MITIGATION FORM

Please select applicable option(s) below.

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

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

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

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

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

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

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

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

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

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

(i) The borrower and grantor;

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

(iii) The vendee in any real estate contract, the lessee in any lease, or the holder of any conveyances of any interest or estate in any portion or all of the property described in such notice, if that contract, lease, or conveyance of such interest or estate, or a memorandum or other notice thereof, was recorded after the recordation of the deed of trust being foreclosed and before the recordation of the notice of sale;

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

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

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

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

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

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

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

NOTICE OF TRUSTEE'S SALE

I.

NOTICE IS HEREBY GIVEN that the undersigned Trustee will on the . . . . day of . . . . . ., . . ., at the hour of . . . . o'clock . . . . M. at . . . . . [street address and location if inside a building] in the City of . . . . . ., State

of Washington, sell at public auction to the highest and best bidder, payable at the time of sale, the following described real property, situated in the County(ies) of . . . . . ., State of Washington, to-wit:

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

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

II.

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

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

III.

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

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

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

IV.

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

V.

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

VI.

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

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

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

VII.

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

VIII.

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

IX.

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

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

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

[Acknowledgment]

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

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

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

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

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

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

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

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

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

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

The court may grant a restraining order or injunction to restrain a trustee's sale pursuant to RCW 61.24.130 upon five days notice to the trustee of the time when, place where, and

the judge before whom the application for the restraining order or injunction is to be made. This notice shall include copies of all pleadings and related documents to be given to the judge. Notice and other process may be served on the trustee at:

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

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

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

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

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

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

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

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

(9) If the trustee elects to foreclose the interest of any occupant or tenant of property comprised solely of a single-family residence, or a condominium, cooperative, or other dwelling unit in a multiplex or other building containing fewer than five residential units, the following notice shall be included as Part X of the Notice of Trustee's Sale:

X.
NOTICE TO OCCUPANTS OR TENANTS

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

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

Application—1985 c 193: See note following RCW 61.24.020.

61.24.060 Rights and remedies of trustee's sale purchaser—Written notice to occupants or tenants. (1) The purchaser at the trustee's sale shall be entitled to possession of the property on the twentieth day following the sale, as against the borrower and grantor under the deed of trust and anyone having an interest junior to the deed of trust, including occupants who are not tenants, who were given all of the notices to which they were entitled under this chapter. The purchaser shall also have a right to the summary proceedings to obtain possession of real property provided in chapter 59.12 RCW.

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

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

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

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

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

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

(a) Common law fraud or misrepresentation;

(b) A violation of Title 19 RCW; or

(c) Failure of the trustee to materially comply with the provisions of this chapter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Chapter 61.34 RCW
DISTRESSED PROPERTY CONVEYANCES

Sections

61.34.020 Definitions.

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

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

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

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

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

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

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

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

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

(2) "Distressed home" means either:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) "Distressed home purchaser" means any person who acquires an interest in a distressed home under a distressed home conveyance. "Distressed home purchaser" includes a person who acts in joint venture or joint enterprise with one

or more distressed home purchasers in a distressed home conveyance. A financial institution is not a distressed home purchaser.

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

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

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

(10) "Homeowner" means a person who owns and has occupied a dwelling as his or her primary residence within one hundred eighty days of the latter of conveyance or mutual acceptance of an agreement to convey an interest in the dwelling, whether or not his or her ownership interest is encumbered by a mortgage, deed of trust, or other lien.

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

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

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

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

(i) The mortgagee;

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

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

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

(v) An attorney-at-law;

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

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

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

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

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

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

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

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

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

Title 62A

UNIFORM COMMERCIAL CODE

Chapters

62A.1 General provisions.
62A.3 Negotiable instruments.
62A.7 Warehouse receipts, bills of lading and other documents of title.

Article 1

GENERAL PROVISIONS

Sections

62A.1-190 Construction—Title applicable to state registered domestic partnerships—2009 c 521. *(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*

62A.1-190 Construction—Title applicable to state registered domestic partnerships—2009 c 521. ***(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*** For the purposes of this title, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to

individuals in state registered domestic partnerships. [2009 c 521 § 143.]

Article 3

NEGOTIABLE INSTRUMENTS

(Formerly: Commercial paper)

Sections

62A.3-540 Collection agencies—Statutory form for notice of dishonor.

62A.3-540 Collection agencies—Statutory form for notice of dishonor. (1) If a check is assigned or written to a collection agency as defined in RCW 19.16.100 and the collection agency or its agent provides a notice of dishonor, the notice of dishonor may be sent by mail to the drawer at the drawer's last known address. The drawer is presumed to have received the notice of dishonor three days from the date it is mailed. The collection agency may, as an alternative to providing a notice in the form described in RCW 62A.3-520, provide a notice in substantially the following form:

NOTICE OF DISHONOR OF CHECK

A check drawn by you and made payable by you to . . . . . in the amount of . . . . . has not been accepted for payment by . . . . . ., which is the drawee bank designated on your check. This check is dated . . . . . ., and it is numbered, No. . . . . ..

You are CAUTIONED that unless you pay the amount of this check and a handling fee of . . . . . within thirty-three days after the date this letter is postmarked or personally delivered, you may very well have to pay the following additional amounts:

(a) Costs of collecting the amount of the check in the lesser of the check amount or forty dollars;

(b) Interest on the amount of the check which shall accrue at the rate of twelve percent per annum from the date of dishonor; and

(c) Three hundred dollars or three times the face amount of the check, whichever is less, plus court costs and attorneys' fees, by award of the court in the event of legal action. Note that this caution regarding increased amounts in any possible legal action is advisory only and should not be construed as a representation or implication that legal action is contemplated or intended.

You are also CAUTIONED that law enforcement agencies may be provided with a copy of this notice of dishonor and the check drawn by you for the possibility of proceeding with criminal charges if you do not pay the amount of this check within thirty-three days after the date this letter is postmarked.

You are advised to make your payment of $. . . . . to . . . . . at the following address: . . . . . .

(2) The cautionary statement regarding law enforcement in subsection (1) of this section need not be included in a notice of dishonor sent by a collection agency. However, if included and whether or not the collection agency regularly refers dishonored checks to law enforcement, the cautionary statement in subsection (1) of this section shall not be construed as a threat to take any action not intended to be taken or that cannot legally be taken; nor shall it be construed to be harassing, oppressive, or abusive conduct; nor shall it be construed to be a false, deceptive, or misleading representation; nor shall it be construed to be unfair or unconscionable; nor shall it otherwise be construed to violate any law.

(3) In addition to sending a notice of dishonor to the drawer of the check under this section, the person sending notice shall execute an affidavit certifying service of the notice by mail. The affidavit of service by mail must be substantially in the following form:

AFFIDAVIT OF SERVICE BY MAIL

I, ..., hereby certify that on the . . . . . day of . . . . . ., 20. . ., a copy of the foregoing Notice was served on . . . . . by mailing via the United States Postal Service, postage prepaid, at . . . . . ., Washington.

Dated: . . . . . .

(Signature)

(4) The person enforcing a check under this section shall file the affidavit and check, or a true copy thereof, with the clerk of the court in which an action on the check is commenced as permitted by court rule or practice. [2009 c 185 § 1; 2005 c 277 § 4.]

Intent—2005 c 277: See note following RCW 28A.300.455.

Article 7

WAREHOUSE RECEIPTS, BILLS OF LADING AND OTHER DOCUMENTS OF TITLE

Sections

62A.7-204 Duty of care; contractual limitation of warehouse worker's liability.
62A.7-309 Duty of care; contractual limitation of carrier's liability.

62A.7-204 Duty of care; contractual limitation of warehouse worker's liability. (1) A warehouse worker is liable for damages for loss of or injury to the goods caused by his or her failure to exercise such care in regard to them as a reasonably careful person would exercise under like circumstances but unless otherwise agreed he or she is not liable for damages which could not have been avoided by the exercise of such care.

(2) Damages may be limited by a term in the warehouse receipt or storage agreement limiting the amount of liability in case of loss or damage, and setting forth a specific liability per article or item, or value per unit of weight, beyond which the warehouse worker shall not be liable; provided, however, that such liability may on written request of the bailor at the time of signing such storage agreement or within a reasonable time after receipt of the warehouse receipt be increased on part or all of the goods thereunder, in which event increased rates may be charged based on such increased valuation, but that no such increase shall be permitted contrary to a lawful limitation of liability contained in the warehouse worker's tariff, if any. No such limitation is effective with respect to the warehouse worker's liability for conversion to his or her own use.

(3) Reasonable provisions as to the time and manner of presenting claims and instituting actions based on the bailment may be included in the warehouse receipt or tariff.

(4) This section does not impair or repeal the duties of care or liabilities or penalties for breach thereof as provided in chapters 22.09 and 22.32 RCW. [2009 c 549 § 1016; 1981 c 13 § 1; 1965 ex.s. c 157 § 7-204. Cf. former RCW sections: (i) RCW 22.04.040; 1913 c 99 § 3; RRS § 3589. (ii) RCW 22.04.220; 1913 c 99 § 21; RRS § 3607.]

62A.7-309 Duty of care; contractual limitation of carrier's liability. Save as otherwise provided in RCW 81.29.010 and 81.29.020

(1) A carrier who issues a bill of lading whether negotiable or nonnegotiable must exercise the degree of care in relation to the goods which a reasonably careful person would exercise under like circumstances.

(2) Damages may be limited by a provision that the carrier's liability shall not exceed a value stated in the document if the carrier's rates are dependent upon value and the consignor by the carrier's tariff is afforded an opportunity to declare a higher value or a value as lawfully provided in the tariff, or where no tariff is filed he or she is otherwise advised of such opportunity; but no such limitation is effective with respect to the carrier's liability for conversion to its own use.

(3) Reasonable provisions as to the time and manner of presenting claims and instituting actions based on the shipment may be included in a bill of lading or tariff. [2009 c 549 § 1017; 1965 ex.s. c 157 § 7-309. Cf. former RCW 81.32.031; 1961 c 14 § 81.32.031; prior: 1915 c 159 § 3; RRS § 3649; formerly RCW 81.32.040.]

Common carriers—Limitation on liability: Chapter 81.29 RCW.

Title 63

PERSONAL PROPERTY

Chapters

63.14 Retail installment sales of goods and services.
63.21 Lost and found property.

Chapter 63.14 RCW

RETAIL INSTALLMENT SALES OF GOODS AND SERVICES

Sections

63.14.010 Definitions.
63.14.123 Restrictions on electronically printed credit and debit card receipts.

63.14.010 Definitions. In this chapter, unless the context otherwise requires:

(1) "Financial institution" means any bank or trust company, mutual savings bank, credit union, or savings and loan association organized pursuant to the laws of any one of the United States of America or the United States of America, or the laws of a foreign country if also qualified to conduct business in any one of the United States of America or pursuant to the laws of the United States of America;

(2) "Goods" means all chattels personal when purchased primarily for personal, family, or household use and not for commercial or business use, but not including money or, except as provided in the next sentence, things in action. The term includes but is not limited to merchandise certificates or coupons, issued by a retail seller, to be used in their face amount in lieu of cash in exchange for goods or services sold by such a seller and goods which, at the time of sale or subsequently, are to be so affixed to real property as to become a part thereof, whether or not severable therefrom;

(3) "Lender credit card" means a card or device under a lender credit card agreement pursuant to which the issuer gives to a cardholder residing in this state the privilege of obtaining credit from the issuer or other persons in purchasing or leasing property or services, obtaining loans, or otherwise, and the issuer of which is not: (a) Principally engaged in the business of selling goods; or (b) a financial institution;

(4) "Lender credit card agreement" means an agreement entered into or performed in this state prescribing the terms of retail installment transactions pursuant to which the issuer may, with the buyer's consent, purchase or acquire one or more retail sellers' indebtedness of the buyer under a sales slip or memorandum evidencing the purchase, lease, loan, or otherwise to be paid in accordance with the agreement. The issuer of a lender credit card agreement shall not be principally engaged in the business of selling goods or be a financial institution;

(5) "Official fees" means the amount of the fees prescribed by law and payable to the state, county, or other governmental agency for filing, recording, or otherwise perfecting, and releasing or satisfying, a retained title, lien, or other security interest created by a retail installment transaction;

(6) "Person" means an individual, partnership, joint venture, corporation, association, or any other group, however organized;

(7) "Principal balance" means the sale price of the goods or services which are the subject matter of a retail installment contract less the amount of the buyer's down payment in money or goods or both, plus the amounts, if any, included therein, if a separate identified charge is made therefor and stated in the contract, for insurance, any vehicle dealer administrative fee, any vehicle dealer documentary service fee, and official fees; and the amount actually paid or to be paid by the retail seller pursuant to an agreement with the buyer to discharge a security interest or lien on like-kind goods traded in or lease interest in the circumstance of a lease for like goods being terminated in conjunction with the sale pursuant to a retail installment contract;

(8) "Rate" means the percentage which, when multiplied times the outstanding balance for each month or other installment period, yields the amount of the service charge for such month or period;

(9) "Retail buyer" or "buyer" means a person who buys or agrees to buy goods or obtain services or agrees to have services rendered or furnished, from a retail seller;

(10) "Retail charge agreement," "revolving charge agreement," or "charge agreement" means an agreement between a retail buyer and a retail seller that is entered into or performed in this state and that prescribes the terms of retail installment transactions with one or more sellers which may be made thereunder from time to time and under the terms of which a service charge, as defined in this section, is to be computed in relation to the buyer's unpaid balance from time to time;

(11) "Retail installment contract" or "contract" means a contract, other than a retail charge agreement, a lender credit

card agreement, or an instrument reflecting a sale made pursuant thereto, entered into or performed in this state for a retail installment transaction. The term "retail installment contract" may include a chattel mortgage, a conditional sale contract, and a contract in the form of a bailment or a lease if the bailee or lessee contracts to pay as compensation for their use a sum substantially equivalent to or in excess of the value of the goods sold and if it is agreed that the bailee or lessee is bound to become, or for no other or a merely nominal consideration, has the option of becoming the owner of the goods upon full compliance with the provisions of the bailment or lease. The term "retail installment contract" does not include: (a) A "consumer lease," heretofore or hereafter entered into, as defined in RCW 63.10.020; (b) a lease which would constitute such "consumer lease" but for the fact that: (i) It was entered into before April 29, 1983; (ii) the lessee was not a natural person; (iii) the lease was not primarily for personal, family, or household purposes; or (iv) the total contractual obligations exceeded twenty-five thousand dollars; or (c) a lease-purchase agreement under chapter 63.19 RCW;

(12) "Retail installment transaction" means any transaction in which a retail buyer purchases goods or services from a retail seller pursuant to a retail installment contract, a retail charge agreement, or a lender credit card agreement, as defined in this section, which provides for a service charge, as defined in this section, and under which the buyer agrees to pay the unpaid principal balance in one or more installments or which provides for no service charge and under which the buyer agrees to pay the unpaid balance in more than four installments;

(13) "Retail seller" or "seller" means a person engaged in the business of selling goods or services to retail buyers;

(14) "Sale price" means the price for which the seller would have sold or furnished to the buyer, and the buyer would have bought or obtained from the seller, the goods or services which are the subject matter of a retail installment transaction. The sale price may include any taxes, registration and license fees, the cost of a guaranteed asset protection waiver, any vehicle dealer administrative fee, any vehicle dealer documentary service fee, and charges for transferring vehicle titles, delivery, installation, servicing, repairs, alterations, or improvements;

(15) "Service charge" however denominated or expressed, means the amount which is paid or payable for the privilege of purchasing goods or services to be paid for by the buyer in installments over a period of time. It does not include the amount, if any, charged for insurance premiums, delinquency charges, attorneys' fees, court costs, any vehicle dealer administrative fee under RCW 46.12.042, any vehicle dealer documentary service fee under RCW 46.70.180(2), or official fees;

(16) "Services" means work, labor, or services of any kind when purchased primarily for personal, family, or household use and not for commercial or business use whether or not furnished in connection with the delivery, installation, servicing, repair, or improvement of goods and includes repairs, alterations, or improvements upon or in connection with real property, but does not include services for which the price charged is required by law to be determined or approved by or to be filed, subject to approval or disapproval, with the United States or any state, or any department, division, agency, officer, or official of either as in the case of transportation services;

(17) "Time balance" means the principal balance plus the service charge. [2009 c 334 § 11; 2003 c 368 § 2; 1999 c 113 § 1; 1997 c 331 § 6; 1993 sp.s. c 5 § 1; 1992 c 134 § 16; 1984 c 280 § 1; 1983 c 158 § 7; 1981 c 77 § 1; 1972 ex.s. c 47 § 1; 1963 c 236 § 1.]

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

Application—2009 c 334: See RCW 48.160.900.

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

Short title—Severability—1992 c 134: See RCW 63.19.900 and 63.19.901.

Severability—1983 c 158: See RCW 63.10.900.

Application, saving—Severability—1981 c 77: See RCW 63.14.902 and 63.14.903.

Effective date—1972 ex.s. c 47: "This 1972 amendatory act shall take effect on January 1, 1973." [1972 ex.s. c 47 § 5.]

63.14.123 Restrictions on electronically printed credit and debit card receipts. (1) A retailer shall not print more than the last five digits of the card account number or print the card expiration date on a credit or debit card receipt. This includes all receipts kept by the person or provided to the cardholder.

(2) This section shall apply only to receipts that are electronically printed and shall not apply to transactions in which the:

(a) Sole means of recording the card number is by handwriting or by an imprint or copy of the credit or debit card; or

(b) Retailer processes the transaction electronically but also takes additional manual measures for the purpose of ensuring that the card is not being used fraudulently, including measures the retailer is contractually obligated to take in connection with its acceptance of credit or debit cards.

(3) For the purposes of this section:

(a) "Credit card" means a card or device existing for the purpose of obtaining money, property, labor, or services on credit.

(b) "Debit card" means a card or device used to obtain money, property, labor, or services by a transaction that debits a cardholder's account, rather than extending credit. [2009 c 382 § 2; 2000 c 163 § 2.]

Severability—Effective date—2000 c 163: See RCW 19.200.900 and 19.200.901.

Chapter 63.21 RCW
LOST AND FOUND PROPERTY

Sections

63.21.080 Chapter not applicable to certain unclaimed property.

63.21.080 Chapter not applicable to certain unclaimed property. This chapter shall not apply to:

(1) Motor vehicles under chapter 46.52 RCW;

(2) Unclaimed property in the hands of a bailee under chapter 63.24 RCW;

(3) Uniform disposition of unclaimed property under chapter 63.29 RCW;

(4) Secured vessels under chapter 79A.65 RCW; and

(5) Crab pots in coastal marine waters under RCW 77.70.500. [2009 c 355 § 2; 1994 c 51 § 6; 1985 c 7 § 125; 1979 ex.s. c 85 § 8.]

Severability—1994 c 51: See RCW 79A.65.900.

Title 64

REAL PROPERTY AND CONVEYANCES

Chapters

64.06 Residential real property transfers—Seller's disclosures.
64.12 Waste and trespass.
64.34 Condominium act.
64.38 Homeowners' associations.
64.44 Contaminated properties.

Chapter 64.06 RCW

RESIDENTIAL REAL PROPERTY TRANSFERS—SELLER'S DISCLOSURES

Sections

64.06.005 Definitions.
64.06.015 Unimproved residential real property—Seller's duty—Format of disclosure statement—Minimum information.
64.06.020 Improved residential real property—Seller's duty—Format of disclosure statement—Minimum information.
64.06.040 After delivery of disclosure statement—Additional information—Seller's duty—Buyer's options—Closing the transaction.

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

(1) "Improved residential real property" means:

(a) Real property consisting of, or improved by, one to four residential dwelling units;

(b) A residential condominium as defined in RCW 64.34.020(9), unless the sale is subject to the public offering statement requirement in the Washington condominium act, chapter 64.34 RCW;

(c) A residential timeshare, as defined in RCW 64.36.010(11), unless subject to written disclosure under the Washington timeshare act, chapter 64.36 RCW; or

(d) A mobile or manufactured home, as defined in RCW 43.22.335 or 46.04.302, that is personal property.

(2) "Residential real property" means both improved and unimproved residential real property.

(3) "Seller disclosure statement" means the form to be completed by the seller of residential real property as prescribed by this chapter.

(4) "Unimproved residential real property" means property zoned for residential use that is not improved by residential dwelling units, a residential condominium, a residential timeshare, or a mobile or manufactured home. It does not include property defined as "timber land" under RCW 84.34.020. [2009 c 505 § 1; 2007 c 107 § 2; 2002 c 268 § 8; 1994 c 200 § 1.]

Application—2009 c 505: "This act applies prospectively and not retroactively. It applies only to sales of property that arise on or after July 26, 2009." [2009 c 505 § 5.]

Findings—Intent—2007 c 107: See note following RCW 64.06.015.

Purpose—Finding—Effective dates—2002 c 268: See notes following RCW 43.22.434.

64.06.015 Unimproved residential real property—Seller's duty—Format of disclosure statement—Minimum information. (1) In a transaction for the sale of unimproved residential real property, the seller shall, unless the buyer has expressly waived the right to receive the disclosure statement under RCW 64.06.010, or unless the transfer is otherwise exempt under RCW 64.06.010, deliver to the buyer a completed seller disclosure statement in the following format and that contains, at a minimum, the following information:

INSTRUCTIONS TO THE SELLER

Please complete the following form. Do not leave any spaces blank. If the question clearly does not apply to the property write "NA." If the answer is "yes" to any * items, please explain on attached sheets. Please refer to the line number(s) of the question(s) when you provide your explanation(s). For your protection you must date and sign each page of this disclosure statement and each attachment. Delivery of the disclosure statement must occur not later than five business days, unless otherwise agreed, after mutual acceptance of a written contract to purchase between a buyer and a seller.

NOTICE TO THE BUYER

THE FOLLOWING DISCLOSURES ARE MADE BY SELLER ABOUT THE CONDITION OF THE PROPERTY LOCATED AT. . . . . ("THE PROPERTY"), OR AS LEGALLY DESCRIBED ON ATTACHED EXHIBIT A.

SELLER MAKES THE FOLLOWING DISCLOSURES OF EXISTING MATERIAL FACTS OR MATERIAL DEFECTS TO BUYER BASED ON SELLER'S ACTUAL KNOWLEDGE OF THE PROPERTY AT THE TIME SELLER COMPLETES THIS DISCLOSURE STATEMENT. UNLESS YOU AND SELLER OTHERWISE AGREE IN WRITING, YOU HAVE THREE BUSINESS DAYS FROM THE DAY SELLER OR SELLER'S AGENT DELIVERS THIS DISCLOSURE STATEMENT TO YOU TO RESCIND THE AGREEMENT BY DELIVERING A SEPARATELY SIGNED WRITTEN STATEMENT OF RESCISSION TO SELLER OR SELLER'S AGENT. IF THE SELLER DOES NOT GIVE YOU A COMPLETED DISCLOSURE STATEMENT, THEN YOU MAY WAIVE THE RIGHT TO RESCIND PRIOR TO OR AFTER THE TIME YOU ENTER INTO A SALE AGREEMENT.

THE FOLLOWING ARE DISCLOSURES MADE BY SELLER AND ARE NOT THE REPRESENTATIONS OF ANY REAL ESTATE LICENSEE OR OTHER PARTY. THIS INFORMATION IS FOR DISCLOSURE ONLY AND IS NOT INTENDED TO BE A PART OF ANY WRITTEN AGREEMENT BETWEEN BUYER AND SELLER.

FOR A MORE COMPREHENSIVE EXAMINATION OF THE SPECIFIC CONDITION OF THIS PROPERTY YOU ARE ADVISED TO OBTAIN AND PAY FOR THE SERVICES OF QUALIFIED EXPERTS TO INSPECT THE PROPERTY, WHICH MAY INCLUDE, WITHOUT LIMITATION, ARCHITECTS, ENGINEERS, LAND SURVEY-

ORS, PLUMBERS, ELECTRICIANS, ROOFERS, BUILDING INSPECTORS, ON-SITE WASTEWATER TREATMENT INSPECTORS, OR STRUCTURAL PEST INSPECTORS. THE PROSPECTIVE BUYER AND SELLER MAY WISH TO OBTAIN PROFESSIONAL ADVICE OR INSPECTIONS OF THE PROPERTY OR TO PROVIDE APPROPRIATE PROVISIONS IN A CONTRACT BETWEEN THEM WITH RESPECT TO ANY ADVICE, INSPECTION, DEFECTS OR WARRANTIES.

Seller . . . . is/ . . . . is not occupying the property.

I. SELLER'S DISCLOSURES:

*If you answer "Yes" to a question with an asterisk (*), please explain your answer and attach documents, if available and not otherwise publicly recorded. If necessary, use an attached sheet.

1. TITLE

[ ] Yes	[ ] No	[ ] Don't know	A. Do you have legal authority to sell the property? If no, please explain.
[ ] Yes	[ ] No	[ ] Don't know	*B. Is title to the property subject to any of the following?
			(1) First right of refusal
			(2) Option
			(3) Lease or rental agreement
			(4) Life estate?
[ ] Yes	[ ] No	[ ] Don't know	*C. Are there any encroachments, boundary agreements, or boundary disputes?
[ ] Yes	[ ] No	[ ] Don't know	*D. Is there a private road or easement agreement for access to the property?
[ ] Yes	[ ] No	[ ] Don't know	*E. Are there any rights-of-way, easements, or access limitations that affect the Buyer's use of the property?
[ ] Yes	[ ] No	[ ] Don't know	*F. Are there any written agreements for joint maintenance of an easement or right-of-way?
[ ] Yes	[ ] No	[ ] Don't know	*G. Is there any study, survey project, or notice that would adversely affect the property?
[ ] Yes	[ ] No	[ ] Don't know	*H. Are there any pending or existing assessments against the property?
[ ] Yes	[ ] No	[ ] Don't know	*I. Are there any zoning violations, nonconforming uses, or any unusual restrictions on the property that affect future construction or remodeling?
[ ] Yes	[ ] No	[ ] Don't know	*J. Is there a boundary survey for the property?
[ ] Yes	[ ] No	[ ] Don't know	*K. Are there any covenants, conditions, or restrictions recorded against title to the property?

2. WATER

			A. Household Water
[ ] Yes	[ ] No	[ ] Don't know	(1) Does the property have potable water supply?
			(2) If yes, the source of water for the property is:
			[ ] Private or publicly owned water system
			[ ] Private well serving only the property
			*[ ] Other water system
[ ] Yes	[ ] No	[ ] Don't know	*If shared, are there any written agreements?
[ ] Yes	[ ] No	[ ] Don't know	*(3) Is there an easement (recorded or unrecorded) for access to and/or maintenance of the water source?
[ ] Yes	[ ] No	[ ] Don't know	*(4) Are there any problems or repairs needed?
[ ] Yes	[ ] No	[ ] Don't know	(5) Is there a connection or hook-up charge payable before the property can be connected to the water main?
[ ] Yes	[ ] No	[ ] Don't know	(6) Have you obtained a certificate of water availability from the water purveyor serving the property? (If yes, please attach a copy.)
[ ] Yes	[ ] No	[ ] Don't know	(7) Is there a water right permit, certificate, or claim associated with household water supply for the property? (If yes, please attach a copy.)
[ ] Yes	[ ] No	[ ] Don't know	(a) If yes, has the water right permit, certificate, or claim been assigned, transferred, or changed?
			*(b) If yes, has all or any portion of the water right not been used for five or more successive years?
			. . . . .
[ ] Yes	[ ] No	[ ] Don't know	(c) If no or don't know, is the water withdrawn from the water source less than 5,000 gallons a day?
[ ] Yes	[ ] No	[ ] Don't know	*(8) Are there any defects in the operation of the water system (e.g., pipes, tank, pump, etc.)?
			B. Irrigation Water
[ ] Yes	[ ] No	[ ] Don't know	(1) Are there any irrigation water rights for the property, such as a water right permit, certificate, or claim? (If yes, please attach a copy.)
[ ] Yes	[ ] No	[ ] Don't know	(a) If yes, has all or any portion of the water right not been used for five or more successive years?
[ ] Yes	[ ] No	[ ] Don't know	(b) If yes, has the water right permit, certificate, or claim been assigned, transferred, or changed?
[ ] Yes	[ ] No	[ ] Don't know	*(2) Does the property receive irrigation water from a ditch company, irrigation district, or other entity? If so, please identify the entity that supplies irrigation water to the property:
			. . . . .
			C. Outdoor Sprinkler System
[ ] Yes	[ ] No	[ ] Don't know	(1) Is there an outdoor sprinkler system for the property?
[ ] Yes	[ ] No	[ ] Don't know	*(2) If yes, are there any defects in the system?
[ ] Yes	[ ] No	[ ] Don't know	*(3) If yes, is the sprinkler system connected to irrigation water?

3. SEWER/SEPTIC SYSTEM

A. The property is served by:
[ ] Public sewer system
[ ] On-site sewage system (including pipes, tanks, drainfields, and all other component parts)
[ ] Other disposal system, please describe:

. . . . . .

[ ] Yes	[ ] No	[ ] Don't know	B. Is the property subject to any sewage system fees or charges in addition to those covered in your regularly billed sewer or on-site sewage system maintenance service?
			C. If the property is connected to an on-site sewage system:
[ ] Yes	[ ] No	[ ] Don't know	*(1) Was a permit issued for its construction?
[ ] Yes	[ ] No	[ ] Don't know	*(2) Was it approved by the local health department or district following its construction?
[ ] Yes	[ ] No	[ ] Don't know	(3) Is the septic system a pressurized system?
[ ] Yes	[ ] No	[ ] Don't know	(4) Is the septic system a gravity system?
[ ] Yes	[ ] No	[ ] Don't know	*(5) Have there been any changes or repairs to the on-site sewage system?
[ ] Yes	[ ] No	[ ] Don't know	(6) Is the on-site sewage system, including the drainfield, located entirely within the boundaries of the property? If no, please explain:
			. . . . .
[ ] Yes	[ ] No	[ ] Don't know	*(7) Does the on-site sewage system require monitoring and maintenance services more frequently than once a year?
			. . . . .

4. ELECTRICAL/GAS

[ ] Yes [ ] No [ ] Don't know A. Is the property served by natural gas?

[ ] Yes [ ] No [ ] Don't know B. Is there a connection charge for gas?

[ ] Yes [ ] No [ ] Don't know C. Is the property served by electricity?

[ ] Yes [ ] No [ ] Don't know D. Is there a connection charge for electricity?

[ ] Yes [ ] No [ ] Don't know *E. Are there any electrical problems on the property?

. . . . . .

5. FLOODING

[ ] Yes [ ] No [ ] Don't know A. Is the property located in a government designated flood zone or floodplain?

6. SOIL STABILITY

[ ] Yes [ ] No [ ] Don't know *A. Are there any settlement, earth movement, slides, or similar soil problems on the property?

. . . . . .

7. ENVIRONMENTAL

[ ] Yes [ ] No [ ] Don't know *A. Have there been any flooding, standing water, or drainage problems on the property that affect the property or access to the property?

[ ] Yes [ ] No [ ] Don't know *B. Does any part of the property contain fill dirt, waste, or other fill material?

[ ] Yes [ ] No [ ] Don't know *C. Is there any material damage to the property from fire, wind, floods, beach movements, earthquake, expansive soils, or landslides?

[ ] Yes [ ] No [ ] Don't know D. Are there any shorelines, wetlands, floodplains, or critical areas on the property?

[ ] Yes [ ] No [ ] Don't know *E. Are there any substances, materials, or products in or on the property that may be environmental concerns, such as asbestos, formaldehyde, radon gas, lead-based paint, fuel or chemical storage tanks, or contaminated soil or water?

[ ] Yes [ ] No [ ] Don't know *F. Has the property been used for commercial or industrial purposes?

[ ] Yes [ ] No [ ] Don't know *G. Is there any soil or groundwater contamination?

[ ] Yes [ ] No [ ] Don't know *H. Are there transmission poles or other electrical utility equipment installed, maintained, or buried on the property that do not provide utility service to the structures on the property?

[ ] Yes [ ] No [ ] Don't know *I. Has the property been used as a legal or illegal dumping site?

[ ] Yes [ ] No [ ] Don't know *J. Has the property been used as an illegal drug manufacturing site?

[ ] Yes [ ] No [ ] Don't know *K. Are there any radio towers that cause interference with cellular telephone reception?

8. HOMEOWNERS' ASSOCIATION/COMMON INTERESTS

[ ] Yes [ ] No [ ] Don't know A. Is there a homeowners' association? Name of association and contact information for an officer, director, employee, or other authorized agent, if any, who may provide the association's financial statements, minutes, bylaws, fining policy, and other information that is not publicly available:

. . . . . .

[ ] Yes [ ] No [ ] Don't know B. Are there regular periodic assessments:

$ . . . per [ ] Month [ ] Year

[ ] Other . . . . . .

[ ] Yes [ ] No [ ] Don't know *C. Are there any pending special assessments?

[ ] Yes [ ] No [ ] Don't know *D. Are there any shared "common areas" or any joint maintenance agreements (facilities such as walls, fences, landscaping, pools, tennis courts, walkways, or other areas co-owned in undivided interest with others)?

9. OTHER FACTS

[ ] Yes [ ] No [ ] Don't know *A. Are there any disagreements, disputes, encroachments, or legal actions concerning the property?

. . . . . .

[ ] Yes [ ] No [ ] Don't know *B. Does the property have any plants or wildlife that are designated as species of concern, or listed as threatened or endangered by the government?

[ ] Yes [ ] No [ ] Don't know *C. Is the property classified or designated as forest land or open space?

. . . . . .

[ ] Yes [ ] No [ ] Don't know D. Do you have a forest management plan? If yes, attach.

[ ] Yes [ ] No [ ] Don't know *E. Have any development-related permit applications been submitted to any government agencies?

. . . . . .

If the answer to E is "yes," what is the status or outcome of those applications?

. . . . . .

10. FULL DISCLOSURE BY SELLERS

A. Other conditions or defects:

[ ] Yes [ ] No [ ] Don't know *Are there any other existing material defects affecting the property that a prospective buyer should know about?

B. Verification:

The foregoing answers and attached explanations (if any) are complete and correct to the best of my/our knowledge and I/we have received a copy hereof. I/we authorize all of my/our real estate licensees, if any, to deliver a copy of this disclosure statement to other real estate licensees and all prospective buyers of the property.

DATE . . . . . SELLER . . . . . SELLER . . . . . .

NOTICE TO BUYER

INFORMATION REGARDING REGISTERED SEX OFFENDERS MAY BE OBTAINED FROM LOCAL LAW ENFORCEMENT AGENCIES. THIS NOTICE IS INTENDED ONLY TO INFORM YOU OF WHERE TO OBTAIN THIS INFORMATION AND IS NOT AN INDICATION OF THE PRESENCE OF REGISTERED SEX OFFENDERS.

II. BUYER'S ACKNOWLEDGMENT

A. Buyer hereby acknowledges that: Buyer has a duty to pay diligent attention to any material defects that are known to Buyer or can be known to Buyer by utilizing diligent attention and observation.

B. The disclosures set forth in this statement and in any amendments to this statement are made only by the Seller and not by any real estate licensee or other party.

C. Buyer acknowledges that, pursuant to RCW 64.06.050(2), real estate licensees are not liable for inaccurate information provided by Seller, except to the extent that real estate licensees know of such inaccurate information.

D. This information is for disclosure only and is not intended to be a part of the written agreement between the Buyer and Seller.

E. Buyer (which term includes all persons signing the "Buyer's acceptance" portion of this disclosure statement below) has received a copy of this Disclosure Statement (including attachments, if any) bearing Seller's signature.

DISCLOSURES CONTAINED IN THIS DISCLOSURE STATEMENT ARE PROVIDED BY SELLER BASED ON SELLER'S ACTUAL KNOWLEDGE OF THE PROPERTY AT THE TIME SELLER COMPLETES THIS DISCLOSURE STATEMENT. UNLESS BUYER AND SELLER

OTHERWISE AGREE IN WRITING, BUYER SHALL HAVE THREE BUSINESS DAYS FROM THE DAY SELLER OR SELLER'S AGENT DELIVERS THIS DISCLOSURE STATEMENT TO RESCIND THE AGREEMENT BY DELIVERING A SEPARATELY SIGNED WRITTEN STATEMENT OF RESCISSION TO SELLER OR SELLER'S AGENT. YOU MAY WAIVE THE RIGHT TO RESCIND PRIOR TO OR AFTER THE TIME YOU ENTER INTO A SALE AGREEMENT.

BUYER HEREBY ACKNOWLEDGES RECEIPT OF A COPY OF THIS DISCLOSURE STATEMENT AND ACKNOWLEDGES THAT THE DISCLOSURES MADE HEREIN ARE THOSE OF THE SELLER ONLY, AND NOT OF ANY REAL ESTATE LICENSEE OR OTHER PARTY.

DATE . . . . . BUYER . . . . . BUYER . . . . . .

(2) The seller disclosure statement shall be for disclosure only, and shall not be considered part of any written agreement between the buyer and seller of residential property. The seller disclosure statement shall be only a disclosure made by the seller, and not any real estate licensee involved in the transaction, and shall not be construed as a warranty of any kind by the seller or any real estate licensee involved in the transaction. [2009 c 505 § 2; 2009 c 130 § 1; 2007 c 107 § 5.]

Reviser's note: This section was amended by 2009 c 130 § 1 and by 2009 c 505 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Application—2009 c 505: See note following RCW 64.06.005.

Findings—Intent—2007 c 107: "(1) The legislature finds that:

(a) Some purchasers of residential property have been financially ruined, and their health threatened, by the discovery of toxic materials buried or otherwise hidden on the property, that was not disclosed by the seller who had actual knowledge of the presence of such materials before the sale;

(b) Current law exempts some sellers from legal responsibility to disclose what they know about the presence of toxic materials on unimproved property they are selling for residential purposes; and

(c) Seller disclosure statements provide information of fundamental importance to a buyer to help the buyer determine whether the property has health and safety characteristics suitable for residential use and whether the buyer can financially afford the clean-up costs and related legal costs.

(2) The legislature intends that:

(a) Purchasers of unimproved property intended to be used for residential purposes be entitled to receive from the seller information known by the seller about toxic materials on or buried in the property;

(b) There be no legal exemptions from such disclosure in the interests of fairness and transparency in residential property sales transactions; and

(c) Separate residential property sales disclosure forms be used for improved and unimproved property, to assist with transparency in property transactions." [2007 c 107 § 1.]

64.06.020 Improved residential real property—Seller's duty—Format of disclosure statement—Minimum information. (1) In a transaction for the sale of improved residential real property, the seller shall, unless the buyer has expressly waived the right to receive the disclosure statement under RCW 64.06.010, or unless the transfer is otherwise exempt under RCW 64.06.010, deliver to the buyer a completed seller disclosure statement in the following format and that contains, at a minimum, the following information:

INSTRUCTIONS TO THE SELLER

Please complete the following form. Do not leave any spaces blank. If the question clearly does not apply to the property write "NA." If the answer is "yes" to any * items, please explain on attached sheets. Please refer to the line number(s) of the question(s) when you provide your explanation(s). For your protection you must date and sign each page of this disclosure statement and each attachment. Delivery of the disclosure statement must occur not later than five business days, unless otherwise agreed, after mutual acceptance of a written contract to purchase between a buyer and a seller.

NOTICE TO THE BUYER

THE FOLLOWING DISCLOSURES ARE MADE BY SELLER ABOUT THE CONDITION OF THE PROPERTY LOCATED AT. . . . . ("THE PROPERTY"), OR AS LEGALLY DESCRIBED ON ATTACHED EXHIBIT A.

SELLER MAKES THE FOLLOWING DISCLOSURES OF EXISTING MATERIAL FACTS OR MATERIAL DEFECTS TO BUYER BASED ON SELLER'S ACTUAL KNOWLEDGE OF THE PROPERTY AT THE TIME SELLER COMPLETES THIS DISCLOSURE STATEMENT. UNLESS YOU AND SELLER OTHERWISE AGREE IN WRITING, YOU HAVE THREE BUSINESS DAYS FROM THE DAY SELLER OR SELLER'S AGENT DELIVERS THIS DISCLOSURE STATEMENT TO YOU TO RESCIND THE AGREEMENT BY DELIVERING A SEPARATELY SIGNED WRITTEN STATEMENT OF RESCISSION TO SELLER OR SELLER'S AGENT. IF THE SELLER DOES NOT GIVE YOU A COMPLETED DISCLOSURE STATEMENT, THEN YOU MAY WAIVE THE RIGHT TO RESCIND PRIOR TO OR AFTER THE TIME YOU ENTER INTO A SALE AGREEMENT.

THE FOLLOWING ARE DISCLOSURES MADE BY SELLER AND ARE NOT THE REPRESENTATIONS OF ANY REAL ESTATE LICENSEE OR OTHER PARTY. THIS INFORMATION IS FOR DISCLOSURE ONLY AND IS NOT INTENDED TO BE A PART OF ANY WRITTEN AGREEMENT BETWEEN BUYER AND SELLER.

FOR A MORE COMPREHENSIVE EXAMINATION OF THE SPECIFIC CONDITION OF THIS PROPERTY YOU ARE ADVISED TO OBTAIN AND PAY FOR THE SERVICES OF QUALIFIED EXPERTS TO INSPECT THE PROPERTY, WHICH MAY INCLUDE, WITHOUT LIMITATION, ARCHITECTS, ENGINEERS, LAND SURVEYORS, PLUMBERS, ELECTRICIANS, ROOFERS, BUILDING INSPECTORS, ON-SITE WASTEWATER TREATMENT INSPECTORS, OR STRUCTURAL PEST INSPECTORS. THE PROSPECTIVE BUYER AND SELLER MAY WISH TO OBTAIN PROFESSIONAL ADVICE OR INSPECTIONS OF THE PROPERTY OR TO PROVIDE APPROPRIATE PROVISIONS IN A CONTRACT BETWEEN THEM WITH RESPECT TO ANY ADVICE, INSPECTION, DEFECTS OR WARRANTIES.

Seller . . . . is/ . . . . is not occupying the property.

I. SELLER'S DISCLOSURES:

*If you answer "Yes" to a question with an asterisk (*), please explain your answer and attach documents, if available and not otherwise publicly recorded. If necessary, use an attached sheet.

1. TITLE

[ ] Yes [ ] No [ ] Don't know A. Do you have legal authority to sell the property? If no, please explain.

[ ] Yes [ ] No [ ] Don't know *B. Is title to the property subject to any of the following?
(1) First right of refusal
(2) Option
(3) Lease or rental agreement
(4) Life estate?

[ ] Yes [ ] No [ ] Don't know *C. Are there any encroachments, boundary agreements, or boundary disputes?

[ ] Yes [ ] No [ ] Don't know *D. Is there a private road or easement agreement for access to the property?

[ ] Yes [ ] No [ ] Don't know *E. Are there any rights-of-way, easements, or access limitations that may affect the Buyer's use of the property?

[ ] Yes [ ] No [ ] Don't know *F. Are there any written agreements for joint maintenance of an easement or right-of-way?

[ ] Yes [ ] No [ ] Don't know *G. Is there any study, survey project, or notice that would adversely affect the property?

[ ] Yes [ ] No [ ] Don't know *H. Are there any pending or existing assessments against the property?

[ ] Yes [ ] No [ ] Don't know *I. Are there any zoning violations, nonconforming uses, or any unusual restrictions on the property that would affect future construction or remodeling?

[ ] Yes [ ] No [ ] Don't know *J. Is there a boundary survey for the property?

[ ] Yes [ ] No [ ] Don't know *K. Are there any covenants, conditions, or restrictions recorded against the property?

2. WATER

A. Household Water

(1) The source of water for the property is:
[ ] Private or publicly owned water system
[ ] Private well serving only the subject property . . . . . .
*[ ] Other water system

[ ] Yes [ ] No [ ] Don't know *If shared, are there any written agreements?

[ ] Yes [ ] No [ ] Don't know *(2) Is there an easement (recorded or unrecorded) for access to and/or maintenance of the water source?

[ ] Yes [ ] No [ ] Don't know *(3) Are there any problems or repairs needed?

[ ] Yes [ ] No [ ] Don't know (4) During your ownership, has the source provided an adequate year-round supply of potable water? If no, please explain.

[ ] Yes [ ] No [ ] Don't know *(5) Are there any water treatment systems for the property? If yes, are they [ ]Leased [ ]Owned

[ ] Yes [ ] No [ ] Don't know *(6) Are there any water rights for the property associated with its domestic water supply, such as a water right permit, certificate, or claim?

[ ] Yes [ ] No [ ] Don't know (a) If yes, has the water right permit, certificate, or claim been assigned, transferred, or changed?

*(b) If yes, has all or any portion of the water right not been used for five or more successive years?

[ ] Yes [ ] No [ ] Don't know *(7) Are there any defects in the operation of the water system (e.g. pipes, tank, pump, etc.)?

. . . . . .

B. Irrigation Water

[ ] Yes [ ] No [ ] Don't know (1) Are there any irrigation water rights for the property, such as a water right permit, certificate, or claim?

[ ] Yes [ ] No [ ] Don't know *(a) If yes, has all or any portion of the water right not been used for five or more successive years?

[ ] Yes [ ] No [ ] Don't know *(b) If so, is the certificate available? (If yes, please attach a copy.)

[ ] Yes [ ] No [ ] Don't know *(c) If so, has the water right permit, certificate, or claim been assigned, transferred, or changed?

. . . . . .

[ ] Yes [ ] No [ ] Don't know *(2) Does the property receive irrigation water from a ditch company, irrigation district, or other entity? If so, please identify the entity that supplies water to the property:

. . . . . .

C. Outdoor Sprinkler System

[ ] Yes [ ] No [ ] Don't know (1) Is there an outdoor sprinkler system for the property?

[ ] Yes [ ] No [ ] Don't know *(2) If yes, are there any defects in the system?

[ ] Yes [ ] No [ ] Don't know *(3) If yes, is the sprinkler system connected to irrigation water?

3. SEWER/ON-SITE SEWAGE SYSTEM

A. The property is served by:
[ ] Public sewer system,
[ ] On-site sewage system (including pipes, tanks, drainfields, and all other component parts)
[ ] Other disposal system, please describe:

. . . . . .

[ ] Yes [ ] No [ ] Don't know B. If public sewer system service is available to the property, is the house connected to the sewer main? If no, please explain.

. . . . . .

[ ] Yes [ ] No [ ] Don't know *C. Is the property subject to any sewage system fees or charges in addition to those covered in your regularly billed sewer or on-site sewage system maintenance service?

D. If the property is connected to an on-site sewage system:

[ ] Yes [ ] No [ ] Don't know *(1) Was a permit issued for its construction, and was it approved by the local health department or district following its construction?

(2) When was it last pumped ?

. . . . . .

[ ] Yes [ ] No [ ] Don't know *(3) Are there any defects in the operation of the on-site sewage system?

[ ] Don't know (4) When was it last inspected?

. . . . . .

By whom: . . . . . .

[ ] Don't know (5) For how many bedrooms was the on-site sewage system approved?

. . . . . bedrooms

[ ] Yes [ ] No [ ] Don't know E. Are all plumbing fixtures, including laundry drain, connected to the sewer/on-site sewage system? If no, please explain: . . . . . .

[ ] Yes [ ] No [ ] Don't know *F. Have there been any changes or repairs to the on-site sewage system?

[ ] Yes [ ] No [ ] Don't know G. Is the on-site sewage system, including the drainfield, located entirely within the boundaries of the property? If no, please explain.

. . . . . .

[ ] Yes [ ] No [ ] Don't know *H. Does the on-site sewage system require monitoring and maintenance services more frequently than once a year?

. . . . . .

NOTICE: IF THIS RESIDENTIAL REAL PROPERTY DISCLOSURE STATEMENT IS BEING COMPLETED FOR NEW CONSTRUCTION WHICH HAS NEVER BEEN OCCUPIED, THE SELLER IS NOT REQUIRED TO COMPLETE THE QUESTIONS LISTED IN ITEM 4. STRUCTURAL OR ITEM 5. SYSTEMS AND FIXTURES

4. STRUCTURAL

[ ] Yes [ ] No [ ] Don't know *A. Has the roof leaked within the last five years?

[ ] Yes [ ] No [ ] Don't know *B. Has the basement flooded or leaked?

[ ] Yes [ ] No [ ] Don't know *C. Have there been any conversions, additions, or remodeling?

[ ] Yes [ ] No [ ] Don't know *(1) If yes, were all building permits obtained?

[ ] Yes [ ] No [ ] Don't know *(2) If yes, were all final inspections obtained?

[ ] Yes [ ] No [ ] Don't know D. Do you know the age of the house? If yes, year of original construction:

. . . . . .

[ ] Yes [ ] No [ ] Don't know *E. Has there been any settling, slippage, or sliding of the property or its improvements?

[ ] Yes [ ] No [ ] Don't know *F. Are there any defects with the following: (If yes, please check applicable items and explain.)

❑ Foundations ❑ Decks ❑ Exterior Walls
❑ Chimneys ❑ Interior Walls ❑ Fire Alarm
❑ Doors ❑ Windows ❑ Patio
❑ Ceilings ❑ Slab Floors ❑ Driveways
❑ Pools ❑ Hot Tub ❑ Sauna
❑ Sidewalks ❑ Outbuildings ❑ Fireplaces
❑ Garage Floors ❑ Walkways ❑ Siding
❑ Other ❑ Wood Stoves

[ ] Yes [ ] No [ ] Don't know *G. Was a structural pest or "whole house" inspection done? If yes, when and by whom was the inspection completed? . . . . . .

[ ] Yes [ ] No [ ] Don't know H. During your ownership, has the property had any wood destroying organism or pest infestation?

[ ] Yes [ ] No [ ] Don't know I. Is the attic insulated?

[ ] Yes [ ] No [ ] Don't know J. Is the basement insulated?

5. SYSTEMS AND FIXTURES

*A. If any of the following systems or fixtures are included with the transfer, are there any defects? If yes, please explain.

[ ] Yes [ ] No [ ] Don't know Electrical system, including wiring, switches, outlets, and service

[ ] Yes [ ] No [ ] Don't know Plumbing system, including pipes, faucets, fixtures, and toilets

[ ] Yes [ ] No [ ] Don't know Hot water tank

[ ] Yes [ ] No [ ] Don't know Garbage disposal

[ ] Yes [ ] No [ ] Don't know Appliances

[ ] Yes [ ] No [ ] Don't know Sump pump

[ ] Yes [ ] No [ ] Don't know Heating and cooling systems

[ ] Yes [ ] No [ ] Don't know Security system
[ ] Owned [ ] Leased

Other . . . . . .

*B. If any of the following fixtures or property is included with the transfer, are they leased? (If yes, please attach copy of lease.)

[ ] Yes [ ] No [ ] Don't know Security system . . . . . .

[ ] Yes [ ] No [ ] Don't know Tanks (type): . . . . . .

[ ] Yes [ ] No [ ] Don't know Satellite dish . . . . . .

Other: . . . . . .

*C. Are any of the following kinds of wood burning appliances present at the property?

[ ] Yes [ ] No [ ] Don't know (1) Woodstove?

[ ] Yes [ ] No [ ] Don't know (2) Fireplace insert?

[ ] Yes [ ] No [ ] Don't know (3) Pellet stove?

[ ] Yes [ ] No [ ] Don't know (4) Fireplace?

[ ] Yes [ ] No [ ] Don't know If yes, are all of the (1) woodstoves or (2) fireplace inserts certified by the U.S. Environmental Protection Agency as clean burning appliances to improve air quality and public health?

6. HOMEOWNERS' ASSOCIATION/COMMON INTERESTS

[ ] Yes [ ] No [ ] Don't know A. Is there a Homeowners' Association? Name of Association and contact information for an officer, director, employee, or other authorized agent, if any, who may provide the association's financial statements, minutes, bylaws, fining policy, and other information that is not publicly available:

. . . . . .

[ ] Yes [ ] No [ ] Don't know B. Are there regular periodic assessments:

$ . . . per [ ] Month [ ] Year
[ ] Other . . . . . .

[ ] Yes [ ] No [ ] Don't know *C. Are there any pending special assessments?

[ ] Yes [ ] No [ ] Don't know *D. Are there any shared "common areas" or any joint maintenance agreements (facilities such as walls, fences, landscaping, pools, tennis courts, walkways, or other areas co-owned in undivided interest with others)?

7. ENVIRONMENTAL

[ ] Yes [ ] No [ ] Don't know *A. Have there been any flooding, standing water, or drainage problems on the property that affect the property or access to the property?

[ ] Yes [ ] No [ ] Don't know *B. Does any part of the property contain fill dirt, waste, or other fill material?

[ ] Yes [ ] No [ ] Don't know *C. Is there any material damage to the property from fire, wind, floods, beach movements, earthquake, expansive soils, or landslides?

[ ] Yes [ ] No [ ] Don't know D. Are there any shorelines, wetlands, floodplains, or critical areas on the property?

[ ] Yes [ ] No [ ] Don't know *E. Are there any substances, materials, or products in or on the property that may be environmental concerns, such as asbestos, formaldehyde, radon gas, lead-based paint, fuel or chemical storage tanks, or contaminated soil or water?

[ ] Yes [ ] No [ ] Don't know *F. Has the property been used for commercial or industrial purposes?

[ ] Yes [ ] No [ ] Don't know *G. Is there any soil or groundwater contamination?

[ ] Yes [ ] No [ ] Don't know *H. Are there transmission poles or other electrical utility equipment installed, maintained, or buried on the property that do not provide utility service to the structures on the property?

[ ] Yes [ ] No [ ] Don't know *I. Has the property been used as a legal or illegal dumping site?

[ ] Yes [ ] No [ ] Don't know *J. Has the property been used as an illegal drug manufacturing site?

[ ] Yes [ ] No [ ] Don't know *K. Are there any radio towers in the area that cause interference with cellular telephone reception?

8. MANUFACTURED AND MOBILE HOMES

If the property includes a manufactured or mobile home,

[ ] Yes [ ] No [ ] Don't know *A. Did you make any alterations to the home? If yes, please describe the alterations: . . . . . .

[ ] Yes [ ] No [ ] Don't know *B. Did any previous owner make any alterations to the home?

[ ] Yes [ ] No [ ] Don't know *C. If alterations were made, were permits or variances for these alterations obtained?

9. FULL DISCLOSURE BY SELLERS

A. Other conditions or defects:

[ ] Yes [ ] No [ ] Don't know *Are there any other existing material defects affecting the property that a prospective buyer should know about?

B. Verification:

The foregoing answers and attached explanations (if any) are complete and correct to the best of my/our knowledge and I/we have received a copy hereof. I/we authorize all of my/our real estate licensees, if any, to deliver a copy of this disclosure statement to other real estate licensees and all prospective buyers of the property.

DATE . . . . . SELLER . . . . . SELLER . . . . . .

NOTICE TO THE BUYER

INFORMATION REGARDING REGISTERED SEX OFFENDERS MAY BE OBTAINED FROM LOCAL LAW ENFORCEMENT AGENCIES. THIS NOTICE IS INTENDED ONLY TO INFORM YOU OF WHERE TO OBTAIN THIS INFORMATION AND IS NOT AN INDICATION OF THE PRESENCE OF REGISTERED SEX OFFENDERS.

II. BUYER'S ACKNOWLEDGMENT

A. Buyer hereby acknowledges that: Buyer has a duty to pay diligent attention to any material defects that are known to Buyer or can be known to Buyer by utilizing diligent attention and observation.

B. The disclosures set forth in this statement and in any amendments to this statement are made only by the Seller and not by any real estate licensee or other party.

C. Buyer acknowledges that, pursuant to RCW 64.06.050(2), real estate licensees are not liable for inaccurate information provided by Seller, except to the extent that real estate licensees know of such inaccurate information.

D. This information is for disclosure only and is not intended to be a part of the written agreement between the Buyer and Seller.

E. Buyer (which term includes all persons signing the "Buyer's acceptance" portion of this disclosure statement below) has received a copy of this Disclosure Statement (including attachments, if any) bearing Seller's signature.

DISCLOSURES CONTAINED IN THIS DISCLOSURE STATEMENT ARE PROVIDED BY SELLER BASED ON SELLER'S ACTUAL KNOWLEDGE OF THE PROPERTY AT THE TIME SELLER COMPLETES THIS DISCLOSURE STATEMENT. UNLESS BUYER AND SELLER OTHERWISE AGREE IN WRITING, BUYER SHALL HAVE THREE BUSINESS DAYS FROM THE DAY SELLER OR SELLER'S AGENT DELIVERS THIS DISCLOSURE STATEMENT TO RESCIND THE AGREEMENT BY DELIVERING A SEPARATELY SIGNED WRITTEN STATEMENT OF RESCISSION TO SELLER OR SELLER'S AGENT. YOU MAY WAIVE THE RIGHT TO RESCIND PRIOR TO OR AFTER THE TIME YOU ENTER INTO A SALE AGREEMENT.

BUYER HEREBY ACKNOWLEDGES RECEIPT OF A COPY OF THIS DISCLOSURE STATEMENT AND ACKNOWLEDGES THAT THE DISCLOSURES MADE HEREIN ARE THOSE OF THE SELLER ONLY, AND NOT OF ANY REAL ESTATE LICENSEE OR OTHER PARTY.

DATE . . . . . BUYER . . . . . BUYER . . . . . .

(2) If the disclosure statement is being completed for new construction which has never been occupied, the disclosure statement is not required to contain and the seller is not required to complete the questions listed in item 4. Structural or item 5. Systems and Fixtures.

(3) The seller disclosure statement shall be for disclosure only, and shall not be considered part of any written agreement between the buyer and seller of residential property. The seller disclosure statement shall be only a disclosure made by the seller, and not any real estate licensee involved in the transaction, and shall not be construed as a warranty of any kind by the seller or any real estate licensee involved in the transaction. [2009 c 505 § 3; 2009 c 130 § 2; 2007 c 107 § 4; 2004 c 114 § 1; 2003 c 200 § 1; 1996 c 301 § 2; 1994 c 200 § 3.]

Reviser's note: This section was amended by 2009 c 130 § 2 and by 2009 c 505 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Application—2009 c 505: See note following RCW 64.06.005.

Findings—Intent—2007 c 107: See note following RCW 64.06.015.

Application—Effective date—2004 c 114: See notes following RCW 64.06.021.

Effective date—1996 c 301 § 2: "Section 2 of this act shall take effect July 1, 1996." [1996 c 301 § 7.]

64.06.040 After delivery of disclosure statement—Additional information—Seller's duty—Buyer's options—Closing the transaction. (1) If, after the date that a seller of residential real property completes a real property transfer disclosure statement, the seller learns from a source other than the buyer or others acting on the buyer's behalf such as an inspector of additional information or an adverse change which makes any of the disclosures made inaccurate, the seller shall amend the real property transfer disclosure statement, and deliver the amendment to the buyer. No amendment shall be required, however, if the seller takes whatever corrective action is necessary so that the accuracy of the disclosure is restored, or the adverse change is corrected, at least three business days prior to the closing date. Unless the corrective action is completed by the seller prior to the closing date, the buyer shall have the right to exercise one of the following two options: (a) Approving and accepting the amendment, or (b) rescinding the agreement of purchase and sale of the property within three business days after receiving the amended real property transfer disclosure statement. Acceptance or recision shall be subject to the same procedures described in RCW 64.06.030. If the closing date provided in the purchase and sale agreement is scheduled to occur within the three-business-day rescission period provided for in this section, the closing date shall be extended until the expiration of the three-business-day rescission period. The buyer shall have no right of rescission if the seller takes whatever action is necessary so that the accuracy of the disclosure is restored at least three business days prior to the closing date.

(2) In the event any act, occurrence, or agreement arising or becoming known after the closing of a residential real property transfer causes a real property transfer disclosure statement to be inaccurate in any way, the seller of such property shall have no obligation to amend the disclosure statement, and the buyer shall not have the right to rescind the transaction under this chapter.

(3) If the seller in a residential real property transfer fails or refuses to provide to the prospective buyer a real property transfer disclosure statement as required under this chapter, the prospective buyer's right of rescission under this section shall apply until the earlier of three business days after receipt of the real property transfer disclosure statement or the date the transfer has closed, unless the buyer has otherwise waived the right of rescission in writing. Closing is deemed to occur when the buyer has paid the purchase price, or down payment, and the conveyance document, including a deed or real estate contract, from the seller has been delivered and recorded. After closing, the seller's obligation to deliver the real property transfer disclosure statement and the buyer's rights and remedies under this chapter shall terminate.

(4) Failure of a homeowners' association or its officers, directors, employees, or authorized agents to provide requested information in part 8 of the disclosure statement form in RCW 64.06.015 or part 6 of the disclosure statement form in RCW 64.06.020 does not constitute a seller's failure or refusal to provide a real property transfer disclosure statement under subsection (3) of this section. [2009 c 505 § 4; 2009 c 130 § 3; 1996 c 301 § 4; 1994 c 200 § 5.]

Reviser's note: This section was amended by 2009 c 130 § 3 and by 2009 c 505 § 4, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Application—2009 c 505: See note following RCW 64.06.005.

Chapter 64.12 RCW
WASTE AND TRESPASS

Sections

64.12.030 Injury to or removing trees, etc.—Damages.

64.12.030 Injury to or removing trees, etc.—Damages. Whenever any person shall cut down, girdle, or otherwise injure, or carry off any tree, including a Christmas tree as defined in *RCW 76.48.020, timber, or shrub on the land of another person, or on the street or highway in front of any person's house, city or town lot, or cultivated grounds, or on the commons or public grounds of any city or town, or on the street or highway in front thereof, without lawful authority, in an action by the person, city, or town against the person committing the trespasses or any of them, any judgment for the plaintiff shall be for treble the amount of damages claimed or assessed. [2009 c 349 § 4; Code 1881 § 602; 1877 p 125 § 607; 1869 p 143 § 556; RRS § 939.]

***Reviser's note:** RCW 76.48.020 was recodified as RCW 76.48.021 pursuant to 2009 c 245 § 29.

Trespass, public lands: Chapter 79.02 RCW.

Chapter 64.34 RCW
CONDOMINIUM ACT

Sections

64.34.392 Reserve account and study—Exemption—Disclosure.

64.34.392 Reserve account and study—Exemption—Disclosure. (1) A condominium association with ten or fewer unit owners is not required to follow the requirements under RCW 64.34.380 through 64.34.390 if two-thirds of the owners agree to exempt the association from the requirements.

(2) The unit owners must agree to maintain an exemption under subsection (1) of this section by a two-thirds vote every three years.

(3) Notwithstanding subsections (1) and (2) of this section, a disclosure that the condominium association does not have a reserve study must be included in a unit's public offering statement as required under RCW 64.34.410 or resale certificate as required under RCW 64.34.425. [2009 c 307 § 1.]

Chapter 64.38 RCW
HOMEOWNERS' ASSOCIATIONS

Sections

64.38.055 Governing documents—Solar panels.
64.38.060 Adult family homes.

64.38.055 Governing documents—Solar panels. (1) The governing documents may not prohibit the installation of a solar energy panel by an owner or resident on the owner's or resident's property as long as the solar energy panel:

(a) Meets applicable health and safety standards and requirements imposed by state and local permitting authorities;

(b) If used to heat water, is certified by the solar rating certification corporation or another nationally recognized certification agency. Certification must be for the solar energy panel and for installation; and

(c) If used to produce electricity, meets all applicable safety and performance standards established by the national electric code, the institute of electrical and electronics engineers, accredited testing laboratories, such as underwriters laboratories, and, where applicable, rules of the utilities and transportation commission regarding safety and reliability.

(2) The governing documents may:

(a) Prohibit the visibility of any part of a roof-mounted solar energy panel above the roof line;

(b) Permit the attachment of a solar energy panel to the slope of a roof facing a street only if:

(i) The solar energy panel conforms to the slope of the roof; and

(ii) The top edge of the solar energy panel is parallel to the roof ridge; or

(c) Require:

(i) A solar energy panel frame, a support bracket, or any visible piping or wiring to be painted to coordinate with the roofing material;

(ii) An owner or resident to shield a ground-mounted solar energy panel if shielding the panel does not prohibit economic installation of the solar energy panel or degrade the operational performance quality of the solar energy panel by more than ten percent; or

(iii) Owners or residents who install solar energy panels to indemnify or reimburse the association or its members for loss or damage caused by the installation, maintenance, or use of a solar energy panel.

(3) The governing documents may include other reasonable rules regarding the placement and manner of a solar energy panel.

(4) For purposes of this section, "solar energy panel" means a panel device or system or combination of panel devices or systems that relies on direct sunlight as an energy source, including a panel device or system or combination of panel devices or systems that collects sunlight for use in:

(a) The heating or cooling of a structure or building;

(b) The heating or pumping of water;

(c) Industrial, commercial, or agricultural processes; or

(d) The generation of electricity.

(5) This section does not apply to common areas as defined in RCW 64.38.010.

(6) This section applies retroactively to a governing document in effect on July 26, 2009. A provision in a governing document in effect on July 26, 2009, that is inconsistent with this section is void and unenforceable. [2009 c 51 § 1.]

64.38.060 Adult family homes. (1) To effectuate the public policy of chapter 70.128 RCW, the governing documents may not limit, directly or indirectly:

(a) Persons with disabilities from living in an adult family home licensed under chapter 70.128 RCW; or

(b) Persons and legal entities from operating adult family homes licensed under chapter 70.128 RCW, whether for-profit or nonprofit, to provide services covered under chapter 70.128 RCW. However, this subsection does not prohibit application of reasonable nondiscriminatory regulation, including but not limited to landscaping standards or regulation of sign location or size, that applies to all residential property subject to the governing documents.

(2) This section applies retroactively to any governing documents in effect on July 26, 2009. Any provision in a governing document in effect on or after July 26, 2009, that is inconsistent with subsection (1) of this section is unenforceable to the extent of the conflict. [2009 c 530 § 4.]

Chapter 64.44 RCW
CONTAMINATED PROPERTIES

Sections

64.44.070 Rules and standards—Chapter administration, property decontamination.

64.44.070 Rules and standards—Chapter administration, property decontamination. (1) The state board of health shall promulgate rules and standards for carrying out the provisions in this chapter in accordance with chapter 34.05 RCW, the administrative procedure act. The local board of health and the local health officer are authorized to exercise such powers as may be necessary to carry out this chapter. The department may provide technical assistance to local health boards and health officers to carry out their duties under this chapter.

(2) The department shall adopt rules for decontamination of a property used as a laboratory for the production of controlled substances and methods for the testing of porous and nonporous surfaces, groundwater, surface water, soil, and septic tanks for contamination. The rules shall establish decontamination standards for hazardous chemicals, including but not limited to methamphetamine, lead, mercury, and total volatile organic compounds. [2009 c 495 § 7; 2006 c 339 § 207; 1999 c 292 § 8; 1990 c 213 § 9.]

Effective date—2009 c 495: See note following RCW 43.20.050.

Intent—Part headings not law—2006 c 339: See notes following RCW 70.96A.325.

Finding—Intent—1999 c 292: See note following RCW 64.44.010.

Title 65
RECORDING, REGISTRATION, AND LEGAL PUBLICATION

Chapters

65.12 Registration of land titles (Torrens act).

Chapter 65.12 RCW
REGISTRATION OF LAND TITLES (TORRENS ACT)

Sections

65.12.035 Form of application. *(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*

65.12.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. *(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*

65.12.035 Form of application. ***(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*** The form of application may, with appropriate changes, be substantially as follows:

FORM OF APPLICATION FOR
INITIAL REGISTRATION OF TITLE TO LAND

State of Washington
County of . . . . . , } ss.

In the superior court of the state of Washington in and for . . . . . county.

In the matter of the application of. . . . . to register the title to the land hereinafter described } PETITION

To the Honorable . . . . . ., judge of said court: I hereby make application to have registered the title to the land hereinafter described, and do solemnly swear that the answers to the questions herewith, and the statements herein contained, are true to the best of my knowledge, information and belief.

First. Name of applicant, ..., age, ... years.

Residence, ... (number and street, if any). Married to or in a state registered domestic partnership with . . . . . (name of husband , wife, or state registered domestic partner).

Second. Applications made by . . . . . ., acting as . . . . . (owner, agent or attorney). Residence, ... (number, street).

Third. Description of real estate is as follows:

. . . . . .

. . . . . .

. . . . . .

. . . . . .

estate or interest therein is . . . . . and . . . . . subject to homestead.

Fourth. The land is . . . . . occupied by . . . . . (names of occupants), whose address is . . . . . (number street and town or city). The estate, interest or claim of occupant is . . . . . .

Fifth. Liens and incumbrances on the land . . . . . Name of holder or owner thereof is . . . . . Whose post office address is . . . . . Amount of claim, $. . . . Recorded, Book . . . ., page . . . ., of the records of said county.

Sixth. Other persons, firm or corporation having or claiming any estate, interest or claim in law or equity, in possession, remainder, reversion or expectancy in said land are . . . . . whose addresses are . . . . . respectively. Character of estate, interest or claim is . . . . . .

Seventh. Other facts connected with said land and appropriate to be considered in this registration proceeding are . . . . . .

Eighth. Therefore, the applicant prays this honorable court to find or declare the title or interest of the applicant in said land and decree the same, and order the registrar of titles to register the same and to grant such other and further relief as may be proper in the premises.

. . . . . .

(Applicant's signature)

By . . . . ., agent, attorney, administrator or guardian.

Subscribed and sworn to before me this . . . . day of . . . . . ., A.D. 19. . .

. . . . . .

Notary Public in and for the state

of Washington, residing at . . . . . .

[2009 c 521 § 145; 1907 c 250 § 7; RRS § 10628.]

65.12.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. ***(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 144.]

Title 66

ALCOHOLIC BEVERAGE CONTROL

Chapters

66.04 Definitions.
66.08 Liquor control board—General provisions.
66.12 Exemptions.
66.20 Liquor permits.
66.24 Licenses—Stamp taxes.
66.28 Miscellaneous regulatory provisions.
66.40 Local option.

Chapter 66.04 RCW
DEFINITIONS

Sections

66.04.010 Definitions.

66.04.010 Definitions. In this title, unless the context otherwise requires:

(1) "Alcohol" is that substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine, which is commonly produced by the fermentation or distillation of grain, starch, molasses, or sugar, or other substances including all dilutions and mixtures of this substance. The term "alcohol" does not include alcohol in the possession of a manufacturer or distiller of alcohol fuel, as described in RCW 66.12.130, which is intended to be denatured and used as a fuel for use in motor vehicles, farm implements, and machines or implements of husbandry.

(2) "Authorized representative" means a person who:

(a) Is required to have a federal basic permit issued pursuant to the federal alcohol administration act, 27 U.S.C. Sec. 204;

(b) Has its business located in the United States outside of the state of Washington;

(c) Acquires ownership of beer or wine for transportation into and resale in the state of Washington; and which beer or wine is produced by a brewery or winery in the United States outside of the state of Washington; and

(d) Is appointed by the brewery or winery referenced in (c) of this subsection as its authorized representative for marketing and selling its products within the United States in accordance with a written agreement between the authorized representative and such brewery or winery pursuant to this title.

(3) "Beer" means any malt beverage, flavored malt beverage, or malt liquor as these terms are defined in this chapter.

(4) "Beer distributor" means a person who buys beer from a domestic brewery, microbrewery, beer certificate of approval holder, or beer importers, or who acquires foreign produced beer from a source outside of the United States, for the purpose of selling the same pursuant to this title, or who represents such brewer or brewery as agent.

(5) "Beer importer" means a person or business within Washington who purchases beer from a beer certificate of approval holder or who acquires foreign produced beer from a source outside of the United States for the purpose of selling the same pursuant to this title.

(6) "Board" means the liquor control board, constituted under this title.

(7) "Brewer" or "brewery" means any person engaged in the business of manufacturing beer and malt liquor. Brewer includes a brand owner of malt beverages who holds a brewer's notice with the federal bureau of alcohol, tobacco, and firearms at a location outside the state and whose malt beverage is contract-produced by a licensed in-state brewery, and who may exercise within the state, under a domestic brewery license, only the privileges of storing, selling to licensed beer distributors, and exporting beer from the state.

(8) "Club" means an organization of persons, incorporated or unincorporated, operated solely for fraternal, benevolent, educational, athletic or social purposes, and not for pecuniary gain.

(9) "Confection" means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, dairy products, or flavorings, in the form of bars, drops, or pieces.

(10) "Consume" includes the putting of liquor to any use, whether by drinking or otherwise.

(11) "Contract liquor store" means a business that sells liquor on behalf of the board through a contract with a contract liquor store manager.

(12) "Craft distillery" means a distillery that pays the reduced licensing fee under RCW 66.24.140.

(13) "Dentist" means a practitioner of dentistry duly and regularly licensed and engaged in the practice of his profession within the state pursuant to chapter 18.32 RCW.

(14) "Distiller" means a person engaged in the business of distilling spirits.

(15) "Domestic brewery" means a place where beer and malt liquor are manufactured or produced by a brewer within the state.

(16) "Domestic winery" means a place where wines are manufactured or produced within the state of Washington.

(17) "Drug store" means a place whose principal business is, the sale of drugs, medicines and pharmaceutical preparations and maintains a regular prescription department and employs a registered pharmacist during all hours the drug store is open.

(18) "Druggist" means any person who holds a valid certificate and is a registered pharmacist and is duly and regularly engaged in carrying on the business of pharmaceutical chemistry pursuant to chapter 18.64 RCW.

(19) "Employee" means any person employed by the board.

(20) "Flavored malt beverage" means:

(a) A malt beverage containing six percent or less alcohol by volume to which flavoring or other added nonbeverage ingredients are added that contain distilled spirits of not more than forty-nine percent of the beverage's overall alcohol content; or

(b) A malt beverage containing more than six percent alcohol by volume to which flavoring or other added nonbeverage ingredients are added that contain distilled spirits of not more than one and one-half percent of the beverage's overall alcohol content.

(21) "Fund" means 'liquor revolving fund.'

(22) "Hotel" means buildings, structures, and grounds, having facilities for preparing, cooking, and serving food, that are kept, used, maintained, advertised, or held out to the public to be a place where food is served and sleeping accommodations are offered for pay to transient guests, in which twenty or more rooms are used for the sleeping accommodation of such transient guests. The buildings, structures, and grounds must be located on adjacent property either owned or leased by the same person or persons.

(23) "Importer" means a person who buys distilled spirits from a distillery outside the state of Washington and imports such spirituous liquor into the state for sale to the board or for export.

(24) "Imprisonment" means confinement in the county jail.

(25) "Liquor" includes the four varieties of liquor herein defined (alcohol, spirits, wine and beer), and all fermented, spirituous, vinous, or malt liquor, or combinations thereof, and mixed liquor, a part of which is fermented, spirituous, vinous or malt liquor, or otherwise intoxicating; and every liquid or solid or semisolid or other substance, patented or not, containing alcohol, spirits, wine or beer, and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption, and any liquid, semisolid, solid, or other substance, which contains more than one percent of alcohol by weight shall be conclusively deemed to be intoxicating. Liquor does not include confections or food products that contain one percent or less of alcohol by weight.

(26) "Malt beverage" or "malt liquor" means any beverage such as beer, ale, lager beer, stout, and porter obtained by the alcoholic fermentation of an infusion or decoction of pure hops, or pure extract of hops and pure barley malt or other wholesome grain or cereal in pure water containing not more than eight percent of alcohol by weight, and not less than one-half of one percent of alcohol by volume. For the purposes of this title, any such beverage containing more than eight percent of alcohol by weight shall be referred to as "strong beer."

(27) "Manufacturer" means a person engaged in the preparation of liquor for sale, in any form whatsoever.

(28) "Nightclub" means an establishment that provides entertainment and has as its primary source of revenue (a) the sale of alcohol for consumption on the premises, (b) cover charges, or (c) both, and has an occupancy load of one hundred or more.

(29) "Package" means any container or receptacle used for holding liquor.

(30) "Passenger vessel" means any boat, ship, vessel, barge, or other floating craft of any kind carrying passengers for compensation.

(31) "Permit" means a permit for the purchase of liquor under this title.

(32) "Person" means an individual, copartnership, association, or corporation.

(33) "Physician" means a medical practitioner duly and regularly licensed and engaged in the practice of his profession within the state pursuant to chapter 18.71 RCW.

(34) "Prescription" means a memorandum signed by a physician and given by him to a patient for the obtaining of liquor pursuant to this title for medicinal purposes.

(35) "Public place" includes streets and alleys of incorporated cities and towns; state or county or township highways or roads; buildings and grounds used for school purposes; public dance halls and grounds adjacent thereto; those parts of establishments where beer may be sold under this title, soft drink establishments, public buildings, public meeting halls, lobbies, halls and dining rooms of hotels, restaurants, theatres, stores, garages and filling stations which are open to and are generally used by the public and to which the public is permitted to have unrestricted access; railroad trains, stages, and other public conveyances of all kinds and character, and the depots and waiting rooms used in conjunction therewith which are open to unrestricted use and access by the public; publicly owned bathing beaches, parks, and/or playgrounds; and all other places of like or similar nature to which the general public has unrestricted right of access, and which are generally used by the public.

(36) "Regulations" means regulations made by the board under the powers conferred by this title.

(37) "Restaurant" means any establishment provided with special space and accommodations where, in consideration of payment, food, without lodgings, is habitually furnished to the public, not including drug stores and soda fountains.

(38) "Sale" and "sell" include exchange, barter, and traffic; and also include the selling or supplying or distributing, by any means whatsoever, of liquor, or of any liquid known or described as beer or by any name whatever commonly used to describe malt or brewed liquor or of wine, by any person to any person; and also include a sale or selling within the state to a foreign consignee or his agent in the state. "Sale" and "sell" shall not include the giving, at no charge, of a reasonable amount of liquor by a person not licensed by the board to a person not licensed by the board, for personal use only. "Sale" and "sell" also does not include a raffle authorized under RCW 9.46.0315: PROVIDED, That the nonprofit organization conducting the raffle has obtained the appropriate permit from the board.

(39) "Soda fountain" means a place especially equipped with apparatus for the purpose of dispensing soft drinks, whether mixed or otherwise.

(40) "Spirits" means any beverage which contains alcohol obtained by distillation, except flavored malt beverages, but including wines exceeding twenty-four percent of alcohol by volume.

(41) "Store" means a state liquor store established under this title.

(42) "Tavern" means any establishment with special space and accommodation for sale by the glass and for consumption on the premises, of beer, as herein defined.

(43)(a) "Wine" means any alcoholic beverage obtained by fermentation of fruits (grapes, berries, apples, et cetera) or other agricultural product containing sugar, to which any saccharine substances may have been added before, during or after fermentation, and containing not more than twenty-four percent of alcohol by volume, including sweet wines fortified with wine spirits, such as port, sherry, muscatel and angelica, not exceeding twenty-four percent of alcohol by volume and not less than one-half of one percent of alcohol by volume. For purposes of this title, any beverage containing no more than fourteen percent of alcohol by volume when bottled or packaged by the manufacturer shall be referred to as "table wine," and any beverage containing alcohol in an amount more than fourteen percent by volume when bottled or packaged by the manufacturer shall be referred to as "fortified wine." However, "fortified wine" shall not include: (i) Wines that are both sealed or capped by cork closure and aged two years or more; and (ii) wines that contain more than fourteen percent alcohol by volume solely as a result of the natural fermentation process and that have not been produced with the addition of wine spirits, brandy, or alcohol.

(b) This subsection shall not be interpreted to require that any wine be labeled with the designation "table wine" or "fortified wine."

(44) "Wine distributor" means a person who buys wine from a domestic winery, wine certificate of approval holder, or wine importer, or who acquires foreign produced wine from a source outside of the United States, for the purpose of selling the same not in violation of this title, or who represents such vintner or winery as agent.

(45) "Wine importer" means a person or business within Washington who purchases wine from a wine certificate of approval holder or who acquires foreign produced wine from a source outside of the United States for the purpose of selling the same pursuant to this title.

(46) "Winery" means a business conducted by any person for the manufacture of wine for sale, other than a domestic winery. [2009 c 373 § 1; 2009 c 271 § 2; 2008 c 94 § 4; (2008 c 94 § 3 expired July 1, 2008). Prior: 2007 c 370 § 10; 2007 c 226 § 1; prior: 2006 c 225 § 1; 2006 c 101 § 1; 2005 c 151 § 1; 2004 c 160 § 1; 2000 c 142 § 1; 1997 c 321 § 37; 1991 c 192 § 1; 1987 c 386 § 3; 1984 c 78 § 5; 1982 c 39 § 1; 1981 1st ex.s. c 5 § 1; 1980 c 140 § 3; 1969 ex.s. c 21 § 13; 1935 c 158 § 1; 1933 ex.s. c 62 § 3; RRS § 7306-3. Formerly RCW 66.04.010 through 66.04.380.]

Reviser's note: (1) The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

(2) This section was amended by 2009 c 271 § 2 and by 2009 c 373 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2008 c 94 §§ 4 and 11: "Sections 4 and 11 of this act take effect July 1, 2008." [2008 c 94 § 13.]

Expiration date—2008 c 94 § 3: "Section 3 of this act expires July 1, 2008." [2008 c 94 § 12.]

Effective date—2007 c 370 §§ 10-20: "Sections 10 through 20 of this act take effect July 1, 2008." [2007 c 370 § 23.]

Effective date—2004 c 160: "This act takes effect January 1, 2005." [2004 c 160 § 20.]

Effective date—1997 c 321: See note following RCW 66.24.010.

Finding and declaration—Severability—1984 c 78: See notes following RCW 66.12.160.

Severability—1982 c 39: "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 c 39 § 3.]

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Effective date—1969 ex.s. c 21: "The effective date of this 1969 amendatory act is July 1, 1969." [1969 ex.s. c 21 § 15.]

Chapter 66.08 RCW

LIQUOR CONTROL BOARD—GENERAL PROVISIONS

Sections

66.08.170 Liquor revolving fund—Creation—Composition—State treasurer as custodian—Daily deposits, exceptions—Budget and accounting act applicable.
66.08.180 Liquor revolving fund—Distribution—Reserve for administration—Disbursement to universities and state agencies.
66.08.220 Liquor revolving fund—Separate account—Distribution.
66.08.225 Liquor revolving fund—License fee deposits—Fund uses. *(Expires July 1, 2011.)*

66.08.170 Liquor revolving fund—Creation—Composition—State treasurer as custodian—Daily deposits, exceptions—Budget and accounting act applicable. There shall be a fund, known as the "liquor revolving fund", which shall consist of all license fees, permit fees, penalties, forfeitures, and all other moneys, income, or revenue received by the board. The state treasurer shall be custodian of the fund. All moneys received by the board or any employee thereof, except for change funds and an amount of petty cash as fixed by the board within the authority of law shall be deposited each day in a depository approved by the state treasurer and transferred to the state treasurer to be credited to the liquor revolving fund. During the 2009-2011 fiscal biennium, the legislature may transfer funds from the liquor revolving account [fund] to the state general fund and may direct an additional amount of liquor profits to be distributed to local governments. Neither the transfer of funds nor the additional distribution of liquor profits to local governments during the 2009-2011 fiscal biennium may reduce the excess fund distributions that otherwise would occur under RCW 66.08.190. Disbursements from the revolving fund shall be on authorization of the board or a duly authorized representative thereof. In order to maintain an effective expenditure and revenue control the liquor revolving fund shall be subject in all respects to chapter 43.88 RCW but no appropriation shall be required to permit expenditures and payment of obligations from such fund. [2009 c 564 § 947; 2002 c 371 § 917; 1961 ex.s. c 6 § 1; 1933 ex.s. c 62 § 73; RRS § 7306-73. Formerly RCW 43.66.060.]

Effective date—2009 c 564: See note following RCW 2.68.020.

Severability—Effective date—2002 c 371: See notes following RCW 9.46.100.

Transfer of liquor revolving fund to state treasurer—Outstanding obligations: "On June 30, 1961, the Washington state liquor control board shall deliver and transfer to the state treasurer, as custodian, all moneys and accounts which comprise the liquor revolving fund, except change funds and petty cash, and the state treasurer shall assume custody thereof. All obligations outstanding as of June 30, 1961 shall be paid out of the liquor revolving fund." [1961 ex.s. c 6 § 5.]

Effective date—1961 ex.s. c 6: "This act shall take effect on June 30, 1961." [1961 ex.s. c 6 § 7.]

66.08.180 Liquor revolving fund—Distribution—Reserve for administration—Disbursement to universities and state agencies. Except as provided in RCW 66.24.290(1), moneys in the liquor revolving fund shall be distributed by the board at least once every three months in accordance with RCW 66.08.190, 66.08.200 and 66.08.210: PROVIDED, That the board shall reserve from distribution such amount not exceeding five hundred thousand dollars as may be necessary for the proper administration of this title.

(1) All license fees, penalties, and forfeitures derived under chapter 13, Laws of 1935 from spirits, beer, and wine restaurant; spirits, beer, and wine private club; hotel; spirits, beer, and wine nightclub; and sports entertainment facility licenses shall every three months be disbursed by the board as follows:

(a) Three hundred thousand dollars per biennium, to the death investigations account for the state toxicology program pursuant to RCW 68.50.107; and

(b) Of the remaining funds:

(i) 6.06 percent to the University of Washington and 4.04 percent to Washington State University for alcoholism and drug abuse research and for the dissemination of such research; and

(ii) 89.9 percent to the general fund to be used by the department of social and health services solely to carry out the purposes of RCW 70.96A.050;

(2) The first fifty-five dollars per license fee provided in RCW 66.24.320 and 66.24.330 up to a maximum of one hundred fifty thousand dollars annually shall be disbursed every three months by the board to the general fund to be used for juvenile alcohol and drug prevention programs for kindergarten through third grade to be administered by the superintendent of public instruction;

(3) Twenty percent of the remaining total amount derived from license fees pursuant to RCW 66.24.320, 66.24.330, 66.24.350, and 66.24.360, shall be transferred to the general fund to be used by the department of social and health services solely to carry out the purposes of RCW 70.96A.050; and

(4) One-fourth cent per liter of the tax imposed by RCW 66.24.210 shall every three months be disbursed by the board to Washington State University solely for wine and wine grape research, extension programs related to wine and wine grape research, and resident instruction in both wine grape production and the processing aspects of the wine industry in accordance with RCW 28B.30.068. The director of financial management shall prescribe suitable accounting procedures to ensure that the funds transferred to the general fund to be used by the department of social and health services and appropriated are separately accounted for. [2009 c 271 § 3; 2007 c 370 § 14; 2000 c 192 § 1. Prior: 1999 c 281 § 1; 1999 c 40 § 7; prior: 1997 c 451 § 3; 1997 c 321 § 57; 1995 c 398 § 16; 1987 c 458 § 10; 1986 c 87 § 1; 1981 1st ex.s. c 5 § 6; 1979 c 151 § 166; 1967 ex.s. c 75 § 1; 1965 ex.s. c 143 § 2; 1949 c 5 § 10; 1935 c 13 § 2; 1933 ex.s. c 62 § 77; Rem. Supp. 1949 § 7306-77. Formerly RCW 43.66.080.]

Effective date—2007 c 370 §§ 10-20: See note following RCW 66.04.010.

Effective date—1999 c 40: See note following RCW 43.103.010.

Effective date—1997 c 451: See note following RCW 66.24.290.

Effective date—1997 c 321: See note following RCW 66.24.010.

Severability—1987 c 458: See note following RCW 48.21.160.

Effective date—1986 c 87: "This act shall take effect July 1, 1987." [1986 c 87 § 3.]

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Effective date—1967 ex.s. c 75: "The effective date of this 1967 amendatory act is July 1, 1967." [1967 ex.s. c 75 § 8.]

Severability—1949 c 5: See RCW 66.98.080.

Distribution for state toxicological lab: RCW 68.50.107.

Wine grape industry, instruction relating to—Purpose—Administration: RCW 28B.30.067 and 28B.30.068.

66.08.220 Liquor revolving fund—Separate account—Distribution. The board shall set aside in a separate account in the liquor revolving fund an amount equal to ten percent of its gross sales of liquor to spirits, beer, and wine restaurant; spirits, beer, and wine private club; spirits, beer, and wine nightclub; hotel; and sports entertainment facility licensees collected from these licensees pursuant to the provisions of RCW 82.08.150, less the fifteen percent discount provided for in RCW 66.24.440; and the moneys in said separate account shall be distributed in accordance with the provisions of RCW 66.08.190, 66.08.200 and 66.08.210. No election unit in which the sale of liquor under spirits, beer, and wine restaurant; spirits, beer, and wine private club; spirits, beer, and wine nightclub; and sports entertainment facility licenses is unlawful shall be entitled to share in the distribution of moneys from such separate account. [2009 c 271 § 4; 2007 c 370 § 15; 1999 c 281 § 2; 1949 c 5 § 11 (adding new section 78-A to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-78A. Formerly RCW 43.66.130.]

Effective date—2007 c 370 §§ 10-20: See note following RCW 66.04.010.

Severability—1949 c 5: See RCW 66.98.080.

66.08.225 Liquor revolving fund—License fee deposits—Fund uses. ***(Expires July 1, 2011.)*** Ten and a [one-] half percent of total license fee revenues collected for the following licenses established in chapter 66.24 RCW: Beer and/or wine restaurants; taverns; snack bars; combined beer and wine retailers; grocery stores; beer and/or wine specialty shops; passenger trains, vessels, and airplanes; spirits, beer, and wine restaurants; spirits, beer, and wine private clubs; beer and wine private clubs; and public houses, shall be deposited in the liquor revolving fund, is not subject to the distribution specified in RCW 66.08.180, and may be expended only for purposes of the administration and enforcement of these licenses. [2009 c 507 § 14.]

Expiration date—2009 c 507: "This act expires July 1, 2011." [2009 c 507 § 15.]

Chapter 66.12 RCW
EXEMPTIONS

Sections

66.12.010 Wine or beer manufactured for home use.
66.12.195 Legislative gift center—Selling wine for off-premises consumption.
66.12.230 Washington grain commission.
66.12.240 Wedding boutiques and art galleries.

66.12.010 Wine or beer manufactured for home use. Nothing in this title, other than RCW 66.28.140, applies to wine or beer manufactured in any home for private consumption, and not for sale. [2009 c 360 § 1; 1981 c 255 § 1; 1955 c 39 § 1; 1933 ex.s. c 62 § 32; RRS § 7306-32.]

66.12.195 Legislative gift center—Selling wine for off-premises consumption. Nothing in this title shall apply to or prevent the legislative gift center created in chapter 44.73 RCW from selling at retail for off-premises consumption wine produced in Washington by a licensed domestic winery. [2009 c 228 § 2.]

Findings—Intent—2009 c 228: "The legislature finds that the production of wine grapes in the state is an important segment of Washington agriculture as evidenced by the continued investments made by the state in developing the wine industry, including the creation of viticulture and enology programs at Washington State University and wine technology programs at community and technical colleges. The legislature further finds that the promotion and sale of Washington wine at the legislative gift center is harmonious with the purpose of the gift center, which is to promote the state and the goods produced around the state. Therefore, the legislature intends to allow the legislative gift center to sell wine produced in Washington to visitors of legal drinking age." [2009 c 228 § 1.]

66.12.230 Washington grain commission. The Washington grain commission created under RCW 15.115.040 may purchase or receive donations of liquor produced from wheat or barley grown in Washington and may use the liquor for the promotional purposes specified in RCW 15.115.170(2). Liquor furnished to the commission under this section which is used within the state is subject to the taxes imposed under RCW 66.24.210. A license, permit, or bond is not required of the Washington grain commission under this title for the promotional purposes specified in RCW 15.115.170(2). [2009 c 33 § 18.]

66.12.240 Wedding boutiques and art galleries. (1) Nothing in this title applies to or prevents a wedding boutique or art gallery from offering or supplying without charge wine or beer by the individual glass to a customer for consumption on the premises. However, the customer must be at least twenty-one years of age and may only be offered one glass of wine or beer, and wine or beer served or consumed shall be purchased from a Washington state licensed retailer or a Washington state liquor store or agency at full retail price. A wedding boutique or art gallery offering wine or beer without charge may not advertise the service of complimentary wine or beer and may not sell wine or beer in any manner. Any employee involved in the service of wine or beer must complete a board-approved limited alcohol server training program.

(2) For the purposes of this section:

(a) "Art gallery" means a room or building devoted to the exhibition and/or sale of the works of art.

(b) "Wedding boutique" means a business primarily engaged in the sale of wedding merchandise. [2009 c 361 § 1.]

Chapter 66.20 RCW
LIQUOR PERMITS

Sections

66.20.310 Alcohol servers—Permits—Requirements—Suspension, revocation—Violations—Exemptions.

66.20.310 Alcohol servers—Permits—Requirements—Suspension, revocation—Violations—Exemptions. (1)(a) There shall be an alcohol server permit, known

as a class 12 permit, for a manager or bartender selling or mixing alcohol, spirits, wines, or beer for consumption at an on-premises licensed facility.

(b) There shall be an alcohol server permit, known as a class 13 permit, for a person who only serves alcohol, spirits, wines, or beer for consumption at an on-premises licensed facility.

(c) As provided by rule by the board, a class 13 permit holder may be allowed to act as a bartender without holding a class 12 permit.

(2)(a) Effective January 1, 1997, except as provided in (d) of this subsection, every alcohol server employed, under contract or otherwise, at a retail licensed premise shall be issued a class 12 or class 13 permit.

(b) Every class 12 and class 13 permit issued shall be issued in the name of the applicant and no other person may use the permit of another permit holder. The holder shall present the permit upon request to inspection by a representative of the board or a peace officer. The class 12 or class 13 permit shall be valid for employment at any retail licensed premises described in (a) of this subsection.

(c) Except as provided in (d) of this subsection, no licensee holding a license as authorized by RCW 66.24.320, 66.24.330, 66.24.350, 66.24.400, 66.24.425, 66.24.450, 66.24.570, and 66.24.600 may employ or accept the services of any person without the person first having a valid class 12 or class 13 permit.

(d) Within sixty days of initial employment, every person whose duties include the compounding, sale, service, or handling of liquor shall have a class 12 or class 13 permit.

(e) No person may perform duties that include the sale or service of alcoholic beverages on a retail licensed premises without possessing a valid alcohol server permit.

(3) A permit issued by a training entity under this section is valid for employment at any retail licensed premises described in subsection (2)(a) of this section for a period of five years unless suspended by the board.

(4) The board may suspend or revoke an existing permit if any of the following occur:

(a) The applicant or permittee has been convicted of violating any of the state or local intoxicating liquor laws of this state or has been convicted at any time of a felony; or

(b) The permittee has performed or permitted any act that constitutes a violation of this title or of any rule of the board.

(5) The suspension or revocation of a permit under this section does not relieve a licensee from responsibility for any act of the employee or agent while employed upon the retail licensed premises. The board may, as appropriate, revoke or suspend either the permit of the employee who committed the violation or the license of the licensee upon whose premises the violation occurred, or both the permit and the license.

(6)(a) After January 1, 1997, it is a violation of this title for any retail licensee or agent of a retail licensee as described in subsection (2)(a) of this section to employ in the sale or service of alcoholic beverages, any person who does not have a valid alcohol server permit or whose permit has been revoked, suspended, or denied.

(b) It is a violation of this title for a person whose alcohol server permit has been denied, suspended, or revoked to accept employment in the sale or service of alcoholic beverages.

(7) Grocery stores licensed under RCW 66.24.360, the primary commercial activity of which is the sale of grocery products and for which the sale and service of beer and wine for on-premises consumption with food is incidental to the primary business, and employees of such establishments, are exempt from RCW 66.20.300 through 66.20.350. [2009 c 271 § 5; 2009 c 187 § 4. Prior: 2008 c 94 § 11; 2008 c 41 § 3; (2008 c 41 § 2 expired July 1, 2008); 2007 c 370 § 17; 1997 c 321 § 45; prior: 1996 c 311 § 1; 1996 c 218 § 3; 1995 c 51 § 3.]

Reviser's note: This section was amended by 2009 c 187 § 4 and by 2009 c 271 § 5, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2008 c 94 §§ 4 and 11: See note following RCW 66.04.010.

Effective date—2008 c 41 §§ 3, 10, and 11: "Sections 3, 10, and 11 of this act take effect July 1, 2008." [2008 c 41 § 16.]

Expiration date—2008 c 41 § 2: "Section 2 of this act expires July 1, 2008." [2008 c 41 § 13.]

Effective date—2007 c 370 §§ 10-20: See note following RCW 66.04.010.

Effective date—1997 c 321: See note following RCW 66.24.010.

Findings—1995 c 51: See note following RCW 66.20.300.

Chapter 66.24 RCW
LICENSES—STAMP TAXES

Sections

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66.24.425 Liquor by the drink, spirits, beer, and wine restaurant license—Restaurants not serving the general public. *(Effective until July 1, 2011.)*
66.24.440 Liquor by the drink, spirits, beer, and wine restaurant, spirits, beer, and wine private club, hotel, spirits, beer, and wine nightclub, and sports entertainment facility license—Purchase of liquor by licensees—Discount.
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66.24.452 Private club beer and wine license—Fee. *(Effective July 1, 2011.)*
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66.24.600 Nightclub license.
66.24.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. *(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*

66.24.010 Licensure—Issuance—Conditions and restrictions—Limitations—Temporary licenses. (1) Every license shall be issued in the name of the applicant, and the holder thereof shall not allow any other person to use the license.

(2) For the purpose of considering any application for a license, or the renewal of a license, the board may cause an inspection of the premises to be made, and may inquire into all matters in connection with the construction and operation of the premises. For the purpose of reviewing any application for a license and for considering the denial, suspension, revocation, or renewal or denial thereof, of any license, the liquor control board may consider any prior criminal conduct of the applicant including an administrative violation history record with the board and a criminal history record information check. The board may submit the criminal history record information check to the Washington state patrol and to the identification division of the federal bureau of investigation in order that these agencies may search their records for prior arrests and convictions of the individual or individuals who filled out the forms. The board shall require fingerprinting of any applicant whose criminal history record information check is submitted to the federal bureau of investigation. The provisions of RCW 9.95.240 and of chapter 9.96A RCW shall not apply to such cases. Subject to the provisions of this section, the board may, in its discretion, grant or deny the renewal or license applied for. Denial may be based on, without limitation, the existence of chronic illegal activity documented in objections submitted pursuant to subsections (8)(d) and (12) of this section. Authority to approve an uncontested or unopposed license may be granted by the board to any staff member the board designates in writing. Conditions for granting such authority shall be adopted by rule. No retail license of any kind may be issued to:

(a) A person doing business as a sole proprietor who has not resided in the state for at least one month prior to receiving a license, except in cases of licenses issued to dining places on railroads, boats, or aircraft;

(b) A copartnership, unless all of the members thereof are qualified to obtain a license, as provided in this section;

(c) A person whose place of business is conducted by a manager or agent, unless such manager or agent possesses the same qualifications required of the licensee;

(d) A corporation or a limited liability company, unless it was created under the laws of the state of Washington or holds a certificate of authority to transact business in the state of Washington.

(3)(a) The board may, in its discretion, subject to the provisions of RCW 66.08.150, suspend or cancel any license; and all rights of the licensee to keep or sell liquor thereunder shall be suspended or terminated, as the case may be.

(b) The board shall immediately suspend the license or certificate of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license or certificate shall be automatic upon the board's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order.

(c) The board may request the appointment of administrative law judges under chapter 34.12 RCW who shall have power to administer oaths, issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents, and testimony, examine witnesses, and to receive testimony in any inquiry, investigation, hearing, or proceeding in any part of the state, under such rules and regulations as the board may adopt.

(d) Witnesses shall be allowed fees and mileage each way to and from any such inquiry, investigation, hearing, or proceeding at the rate authorized by RCW 34.05.446. Fees need not be paid in advance of appearance of witnesses to testify or to produce books, records, or other legal evidence.

(e) In case of disobedience of any person to comply with the order of the board or a subpoena issued by the board, or any of its members, or administrative law judges, or on the refusal of a witness to testify to any matter regarding which he or she may be lawfully interrogated, the judge of the superior court of the county in which the person resides, on application of any member of the board or administrative law judge, shall compel obedience by contempt proceedings, as in the case of disobedience of the requirements of a subpoena issued from said court or a refusal to testify therein.

(4) Upon receipt of notice of the suspension or cancellation of a license, the licensee shall forthwith deliver up the license to the board. Where the license has been suspended only, the board shall return the license to the licensee at the expiration or termination of the period of suspension. The board shall notify all vendors in the city or place where the licensee has its premises of the suspension or cancellation of the license; and no employee may allow or cause any liquor to be delivered to or for any person at the premises of that licensee.

(5)(a) At the time of the original issuance of a spirits, beer, and wine restaurant license, the board shall prorate the license fee charged to the new licensee according to the number of calendar quarters, or portion thereof, remaining until the first renewal of that license is required.

(b) Unless sooner canceled, every license issued by the board shall expire at midnight of the thirtieth day of June of the fiscal year for which it was issued. However, if the board deems it feasible and desirable to do so, it may establish, by rule pursuant to chapter 34.05 RCW, a system for staggering

the annual renewal dates for any and all licenses authorized by this chapter. If such a system of staggered annual renewal dates is established by the board, the license fees provided by this chapter shall be appropriately prorated during the first year that the system is in effect.

(6) Every license issued under this section shall be subject to all conditions and restrictions imposed by this title or by rules adopted by the board. All conditions and restrictions imposed by the board in the issuance of an individual license shall be listed on the face of the individual license along with the trade name, address, and expiration date.

(7) Every licensee shall post and keep posted its license, or licenses, in a conspicuous place on the premises.

(8)(a) Unless (b) of this subsection applies, before the board issues a new or renewal license to an applicant it shall give notice of such application to the chief executive officer of the incorporated city or town, if the application is for a license within an incorporated city or town, or to the county legislative authority, if the application is for a license outside the boundaries of incorporated cities or towns.

(b) If the application for a special occasion license is for an event held during a county, district, or area fair as defined by RCW 15.76.120, and the county, district, or area fair is located on property owned by the county but located within an incorporated city or town, the county legislative authority shall be the entity notified by the board under (a) of this subsection. The board shall send a duplicate notice to the incorporated city or town within which the fair is located.

(c) The incorporated city or town through the official or employee selected by it, or the county legislative authority or the official or employee selected by it, shall have the right to file with the board within twenty days after the date of transmittal of such notice for applications, or at least thirty days prior to the expiration date for renewals, written objections against the applicant or against the premises for which the new or renewal license is asked. The board may extend the time period for submitting written objections.

(d) The written objections shall include a statement of all facts upon which such objections are based, and in case written objections are filed, the city or town or county legislative authority may request and the liquor control board may in its discretion hold a hearing subject to the applicable provisions of Title 34 RCW. If the board makes an initial decision to deny a license or renewal based on the written objections of an incorporated city or town or county legislative authority, the applicant may request a hearing subject to the applicable provisions of Title 34 RCW. If such a hearing is held at the request of the applicant, liquor control board representatives shall present and defend the board's initial decision to deny a license or renewal.

(e) Upon the granting of a license under this title the board shall send written notification to the chief executive officer of the incorporated city or town in which the license is granted, or to the county legislative authority if the license is granted outside the boundaries of incorporated cities or towns. When the license is for a special occasion license for an event held during a county, district, or area fair as defined by RCW 15.76.120, and the county, district, or area fair is located on county-owned property but located within an incorporated city or town, the written notification shall be sent to both the incorporated city or town and the county legislative authority.

(9)(a) Before the board issues any license to any applicant, it shall give (i) due consideration to the location of the business to be conducted under such license with respect to the proximity of churches, schools, and public institutions and (ii) written notice, with receipt verification, of the application to public institutions identified by the board as appropriate to receive such notice, churches, and schools within five hundred feet of the premises to be licensed. The board shall not issue a liquor license for either on-premises or off-premises consumption covering any premises not now licensed, if such premises are within five hundred feet of the premises of any tax-supported public elementary or secondary school measured along the most direct route over or across established public walks, streets, or other public passageway from the main entrance of the school to the nearest public entrance of the premises proposed for license, and if, after receipt by the school of the notice as provided in this subsection, the board receives written objection, within twenty days after receiving such notice, from an official representative or representatives of the school within five hundred feet of said proposed licensed premises, indicating to the board that there is an objection to the issuance of such license because of proximity to a school. The board may extend the time period for submitting objections. For the purpose of this section, "church" means a building erected for and used exclusively for religious worship and schooling or other activity in connection therewith. For the purpose of this section, "public institution" means institutions of higher education, parks, community centers, libraries, and transit centers.

(b) No liquor license may be issued or reissued by the board to any motor sports facility or licensee operating within the motor sports facility unless the motor sports facility enforces a program reasonably calculated to prevent alcohol or alcoholic beverages not purchased within the facility from entering the facility and such program is approved by local law enforcement agencies.

(c) It is the intent under this subsection (9) that a retail license shall not be issued by the board where doing so would, in the judgment of the board, adversely affect a private school meeting the requirements for private schools under Title 28A RCW, which school is within five hundred feet of the proposed licensee. The board shall fully consider and give substantial weight to objections filed by private schools. If a license is issued despite the proximity of a private school, the board shall state in a letter addressed to the private school the board's reasons for issuing the license.

(10) The restrictions set forth in subsection (9) of this section shall not prohibit the board from authorizing the assumption of existing licenses now located within the restricted area by other persons or licenses or relocations of existing licensed premises within the restricted area. In no case may the licensed premises be moved closer to a church or school than it was before the assumption or relocation.

(11)(a) Nothing in this section prohibits the board, in its discretion, from issuing a temporary retail or distributor license to an applicant to operate the retail or distributor premises during the period the application for the license is pending. The board may establish a fee for a temporary license by rule.

(b) A temporary license issued by the board under this section shall be for a period not to exceed sixty days. A temporary license may be extended at the discretion of the board for additional periods of sixty days upon payment of an additional fee and upon compliance with all conditions required in this section.

(c) Refusal by the board to issue or extend a temporary license shall not entitle the applicant to request a hearing. A temporary license may be canceled or suspended summarily at any time if the board determines that good cause for cancellation or suspension exists. RCW 66.08.130 applies to temporary licenses.

(d) Application for a temporary license shall be on such form as the board shall prescribe. If an application for a temporary license is withdrawn before issuance or is refused by the board, the fee which accompanied such application shall be refunded in full.

(12) In determining whether to grant or deny a license or renewal of any license, the board shall give substantial weight to objections from an incorporated city or town or county legislative authority based upon chronic illegal activity associated with the applicant's operations of the premises proposed to be licensed or the applicant's operation of any other licensed premises, or the conduct of the applicant's patrons inside or outside the licensed premises. "Chronic illegal activity" means (a) a pervasive pattern of activity that threatens the public health, safety, and welfare of the city, town, or county including, but not limited to, open container violations, assaults, disturbances, disorderly conduct, or other criminal law violations, or as documented in crime statistics, police reports, emergency medical response data, calls for service, field data, or similar records of a law enforcement agency for the city, town, county, or any other municipal corporation or any state agency; or (b) an unreasonably high number of citations for violations of RCW 46.61.502 associated with the applicant's or licensee's operation of any licensed premises as indicated by the reported statements given to law enforcement upon arrest. [2009 c 271 § 6; 2007 c 473 § 1; 2006 c 359 § 1; 2004 c 133 § 1; 2002 c 119 § 3; 1998 c 126 § 2. Prior: 1997 c 321 § 1; 1997 c 58 § 873; 1995 c 232 § 1; 1988 c 200 § 1; 1987 c 217 § 1; 1983 c 160 § 3; 1982 c 85 § 2; 1981 1st ex.s. c 5 § 10; 1981 c 67 § 31; 1974 ex.s. c 66 § 1; 1973 1st ex.s. c 209 § 10; 1971 c 70 § 1; 1969 ex.s. c 178 § 3; 1947 c 144 § 1; 1935 c 174 § 3; 1933 ex.s. c 62 § 27; Rem. Supp. 1947 § 7306-27. Formerly RCW 66.24.010, part and 66.24.020 through 66.24.100. FORMER PART OF SECTION: 1937 c 217 § 1 (23U) now codified as RCW 66.24.025.]

Effective date—1998 c 126: See note following RCW 66.20.010.

Effective date—1997 c 321: "This act takes effect July 1, 1998." [1997 c 321 § 64.]

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

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

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Effective dates—Severability—1981 c 67: See notes following RCW 34.12.010.

Severability—Effective date—1973 1st ex.s. c 209: See notes following RCW 66.08.070.

Effective date—1971 c 70: "The effective date of this 1971 amendatory act is July 1, 1971." [1971 c 70 § 4.]

66.24.170 Domestic winery license—Winery as distributor and/or retailer of own wine—Off-premise samples—Domestic wine made into sparkling wine—Sales at qualifying farmers markets. (1) There shall be a license for domestic wineries; fee to be computed only on the liters manufactured: Less than two hundred fifty thousand liters per year, one hundred dollars per year; and two hundred fifty thousand liters or more per year, four hundred dollars per year.

(2) The license allows for the manufacture of wine in Washington state from grapes or other agricultural products.

(3) Any domestic winery licensed under this section may also act as a retailer of wine of its own production. Any domestic winery licensed under this section may act as a distributor of its own production. Notwithstanding any language in this title to the contrary, a domestic winery may use a common carrier to deliver up to one hundred cases of its own production, in the aggregate, per month to licensed Washington retailers. A domestic winery may not arrange for any such common carrier shipments to licensed retailers of wine not of its own production. Except as provided in this section, any winery operating as a distributor and/or retailer under this subsection shall comply with the applicable laws and rules relating to distributors and/or retailers, except that a winery operating as a distributor may maintain a warehouse off the premises of the winery for the distribution of wine of its own production provided that: (a) The warehouse has been approved by the board under RCW 66.24.010; and (b) the number of warehouses off the premises of the winery does not exceed one.

(4) A domestic winery licensed under this section, at locations separate from any of its production or manufacturing sites, may serve samples of its own products, with or without charge, and sell wine of its own production at retail, provided that: (a) Each additional location has been approved by the board under RCW 66.24.010; (b) the total number of additional locations does not exceed two; (c) a winery may not act as a distributor at any such additional location; and (d) any person selling or serving wine at an additional location for on-premise consumption must obtain a class 12 or class 13 alcohol server permit. Each additional location is deemed to be part of the winery license for the purpose of this title. At additional locations operated by multiple wineries under this section, if the board cannot connect a violation of RCW 66.44.200 or 66.44.270 to a single licensee, the board may hold all licensees operating the additional location jointly liable. Nothing in this subsection shall be construed to prevent a domestic winery from holding multiple domestic winery licenses.

(5)(a) A domestic winery licensed under this section may apply to the board for an endorsement to sell wine of its own production at retail for off-premises consumption at a qualifying farmers market. The annual fee for this endorsement is seventy-five dollars. An endorsement issued pursuant to this subsection does not count toward the two additional retail locations limit specified in this section.

(b) For each month during which a domestic winery will sell wine at a qualifying farmers market, the winery must provide the board or its designee a list of the dates, times, and locations at which bottled wine may be offered for sale. This list must be received by the board before the winery may offer wine for sale at a qualifying farmers market.

(c) The wine sold at qualifying farmers markets must be made entirely from grapes grown in a recognized Washington appellation or from other agricultural products grown in this state.

(d) Each approved location in a qualifying farmers market is deemed to be part of the winery license for the purpose of this title. The approved locations under an endorsement granted under this subsection do not include the tasting or sampling privilege of a winery. The winery may not store wine at a farmers market beyond the hours that the winery offers bottled wine for sale. The winery may not act as a distributor from a farmers market location.

(e) Before a winery may sell bottled wine at a qualifying farmers market, the farmers market must apply to the board for authorization for any winery with an endorsement approved under this subsection to sell bottled wine at retail at the farmers market. This application shall include, at a minimum: (i) A map of the farmers market showing all booths, stalls, or other designated locations at which an approved winery may sell bottled wine; and (ii) the name and contact information for the on-site market managers who may be contacted by the board or its designee to verify the locations at which bottled wine may be sold. Before authorizing a qualifying farmers market to allow an approved winery to sell bottled wine at retail at its farmers market location, the board shall notify the persons or entities of such application for authorization pursuant to RCW 66.24.010 (8) and (9). An authorization granted under this subsection (5)(e) may be withdrawn by the board for any violation of this title or any rules adopted under this title.

(f) The board may adopt rules establishing the application and approval process under this section and such additional rules as may be necessary to implement this section.

(g) For the purposes of this subsection:

(i) "Qualifying farmers market" means an entity that sponsors a regular assembly of vendors at a defined location for the purpose of promoting the sale of agricultural products grown or produced in this state directly to the consumer under conditions that meet the following minimum requirements:

(A) There are at least five participating vendors who are farmers selling their own agricultural products;

(B) The total combined gross annual sales of vendors who are farmers exceeds the total combined gross annual sales of vendors who are processors or resellers;

(C) The total combined gross annual sales of vendors who are farmers, processors, or resellers exceeds the total combined gross annual sales of vendors who are not farmers, processors, or resellers;

(D) The sale of imported items and secondhand items by any vendor is prohibited; and

(E) No vendor is a franchisee.

(ii) "Farmer" means a natural person who sells, with or without processing, agricultural products that he or she raises on land he or she owns or leases in this state or in another state's county that borders this state.

(iii) "Processor" means a natural person who sells processed food that he or she has personally prepared on land he or she owns or leases in this state or in another state's county that borders this state.

(iv) "Reseller" means a natural person who buys agricultural products from a farmer and resells the products directly to the consumer.

(6) Wine produced in Washington state by a domestic winery licensee may be shipped out-of-state for the purpose of making it into sparkling wine and then returned to such licensee for resale. Such wine shall be deemed wine manufactured in the state of Washington for the purposes of RCW 66.24.206, and shall not require a special license. [2009 c 373 § 4; 2008 c 41 § 5; 2007 c 16 § 2; 2006 c 302 § 1; 2003 c 44 § 1; 2000 c 141 § 1; 1997 c 321 § 3; 1991 c 192 § 2; 1982 c 85 § 4; 1981 1st ex.s. c 5 § 31; 1939 c 172 § 1 (23C); 1937 c 217 § 1 (23C) (adding new section 23-C to 1933 ex.s. c 62); RRS § 7306-23C. Formerly RCW 66.24.170, 66.24.180, and 66.24.190.]

Effective date—2006 c 302: "Except for sections 10 and 12 of this act, this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect April 14, 2006." [2006 c 302 § 16.]

Effective date—1997 c 321: See note following RCW 66.24.010.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

66.24.191 Wine transfers. Wine may be transferred from one licensed location to another licensed location so long as both locations are under common ownership. A licensed site may transfer up to a total of twenty cases of wine per calendar year. [2009 c 373 § 10.]

66.24.210 Imposition of taxes on sales of wine and cider—Additional taxes—Distributions. (1) There is hereby imposed upon all wines except cider sold to wine distributors and the Washington state liquor control board, within the state a tax at the rate of twenty and one-fourth cents per liter. Any domestic winery or certificate of approval holder acting as a distributor of its own production shall pay taxes imposed by this section. There is hereby imposed on all cider sold to wine distributors and the Washington state liquor control board within the state a tax at the rate of three and fifty-nine one-hundredths cents per liter. However, wine sold or shipped in bulk from one winery to another winery shall not be subject to such tax.

(a) The tax provided for in this section shall be collected by direct payments based on wine purchased by wine distributors.

(b) Except as provided in subsection (7) of this section, every person purchasing wine under the provisions of this section shall on or before the twentieth day of each month report to the board all purchases during the preceding calendar month in such manner and upon such forms as may be prescribed by the board, and with such report shall pay the tax due from the purchases covered by such report unless the same has previously been paid. Any such purchaser of wine whose applicable tax payment is not postmarked by the twentieth day following the month of purchase will be assessed a

penalty at the rate of two percent a month or fraction thereof. The board may require that every such person shall execute to and file with the board a bond to be approved by the board, in such amount as the board may fix, securing the payment of the tax. If any such person fails to pay the tax when due, the board may forthwith suspend or cancel the license until all taxes are paid.

(c) Any licensed retailer authorized to purchase wine from a certificate of approval holder with a direct shipment endorsement or a domestic winery shall make monthly reports to the liquor control board on wine purchased during the preceding calendar month in the manner and upon such forms as may be prescribed by the board.

(2) An additional tax is imposed equal to the rate specified in RCW 82.02.030 multiplied by the tax payable under subsection (1) of this section. All revenues collected during any month from this additional tax shall be transferred to the state general fund by the twenty-fifth day of the following month.

(3) An additional tax is imposed on wines subject to tax under subsection (1) of this section, at the rate of one-fourth of one cent per liter for wine sold after June 30, 1987. After June 30, 1996, such additional tax does not apply to cider. An additional tax of five one-hundredths of one cent per liter is imposed on cider sold after June 30, 1996. All revenues collected under this subsection (3) shall be disbursed quarterly to the Washington wine commission for use in carrying out the purposes of chapter 15.88 RCW.

(4) An additional tax is imposed on all wine subject to tax under subsection (1) of this section. The additional tax is equal to twenty-three and forty-four one-hundredths cents per liter on fortified wine as defined in RCW 66.04.010 when bottled or packaged by the manufacturer, one cent per liter on all other wine except cider, and eighteen one-hundredths of one cent per liter on cider. All revenues collected during any month from this additional tax shall be deposited in the state general fund by the twenty-fifth day of the following month.

(5)(a) An additional tax is imposed on all cider subject to tax under subsection (1) of this section. The additional tax is equal to two and four one-hundredths cents per liter of cider sold after June 30, 1996, and before July 1, 1997, and is equal to four and seven one-hundredths cents per liter of cider sold after June 30, 1997.

(b) All revenues collected from the additional tax imposed under this subsection (5) shall be deposited in the state general fund.

(6) For the purposes of this section, "cider" means table wine that contains not less than one-half of one percent of alcohol by volume and not more than seven percent of alcohol by volume and is made from the normal alcoholic fermentation of the juice of sound, ripe apples or pears. "Cider" includes, but is not limited to, flavored, sparkling, or carbonated cider and cider made from condensed apple or pear must.

(7) For the purposes of this section, out-of-state wineries shall pay taxes under this section on wine sold and shipped directly to Washington state residents in a manner consistent with the requirements of a wine distributor under subsections (1) through (4) of this section, except wineries shall be responsible for the tax and not the resident purchaser. [2009 c 479 § 42; 2008 c 94 § 8. Prior: 2006 c 302 § 5; 2006 c 101 § 4; 2006 c 49 § 8; 2001 c 124 § 1; 1997 c 321 § 8; 1996 c 118 § 1; 1995 c 232 § 3; 1994 sp.s. c 7 § 901 (Referendum Bill No. 43, approved November 8, 1994); 1993 c 160 § 2; 1991 c 192 § 3; 1989 c 271 § 501; 1987 c 452 § 11; 1983 2nd ex.s. c 3 § 10; 1982 1st ex.s. c 35 § 23; 1981 1st ex.s. c 5 § 12; 1973 1st ex.s. c 204 § 2; 1969 ex.s. c 21 § 3; 1943 c 216 § 2; 1939 c 172 § 3; 1935 c 158 § 3 (adding new section 24-A to 1933 ex.s. c 62); Rem. Supp. 1943 § 7306-24A. Formerly RCW 66.04.120, 66.24.210, part, 66.24.220, and 66.24.230, part. FORMER PART OF SECTION: 1933 ex.s. c 62 § 25, part, now codified as RCW 66.24.230.]

Effective date—2009 c 479: See note following RCW 2.56.030.

Effective date—2006 c 302: See note following RCW 66.24.170.

Effective date—2001 c 124: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2001." [2001 c 124 § 2.]

Effective date—1997 c 321: See note following RCW 66.24.010.

Effective date—1996 c 118: "This act shall take effect July 1, 1996." [1996 c 118 § 2.]

Contingent partial referendum—1994 sp.s. c 7 §§ 901-909: "Sections 901 through 909, chapter 7, Laws of 1994 sp. sess. shall be submitted as a single ballot measure to the people for their adoption and ratification, or rejection, at the next succeeding general election to be held in this state, in accordance with Article II, section 1 of the state Constitution, as amended, and the laws adopted to facilitate the operation thereof unless section 13, chapter 2, Laws of 1994, has been declared invalid or otherwise enjoined or stayed by a court of competent jurisdiction." [1994 sp.s. c 7 § 911 (Referendum Bill No. 43, approved November 8, 1994).]

Reviser's note: Sections 901 through 909, chapter 7, Laws of 1994 sp. sess., were adopted and ratified by the people at the November 8, 1994, general election.

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Effective date—1993 c 160: See note following RCW 66.12.180.

Effective dates—1989 c 271: See note following RCW 66.28.200.

Severability—1989 c 271: See note following RCW 9.94A.510.

Construction—Effective dates—Severability—1987 c 452: See RCW 15.88.900 through 15.88.902.

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Severability—Effective dates—1982 1st ex.s. c 35: See notes following RCW 82.08.020.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Floor stocks tax: "There is hereby imposed upon every licensed wine distributor who possesses wine for resale upon which the tax has not been paid under section 2, chapter 204, Laws of 1973, a floor stocks tax of sixty-five cents per wine gallon on wine in his or her possession or under his or her control on June 30, 1973. Each such distributor shall within twenty days after June 30, 1973, file a report with the Washington state liquor control board in such form as the board may prescribe, showing the wine products on hand July 1, 1973, converted to gallons thereof and the amount of tax due thereon. The tax imposed by this section shall be due and payable within twenty days after July 1, 1973, and thereafter bear interest at the rate of one percent per month." [1997 c 321 § 9; 1973 1st ex.s. c 204 § 3.]

Effective date—1973 1st ex.s. c 204: See note following RCW 82.08.150.

Effective date—1969 ex.s. c 21: See note following RCW 66.04.010.

Giving away liquor prohibited—Exceptions: RCW 66.28.040.

No tax on wine shipped to bonded warehouse: RCW 66.24.185.

66.24.290 Authorized, prohibited sales—Monthly reports—Added tax—Distribution—Late payment penalty—Additional taxes, purposes. (1) Any microbrewer or

domestic brewery or beer distributor licensed under this title may sell and deliver beer and strong beer to holders of authorized licenses direct, but to no other person, other than the board. Any certificate of approval holder authorized to act as a distributor under RCW 66.24.270 shall pay the taxes imposed by this section.

(a) Every such brewery or beer distributor shall report all sales to the board monthly, pursuant to the regulations, and shall pay to the board as an added tax for the privilege of manufacturing and selling the beer and strong beer within the state a tax of one dollar and thirty cents per barrel of thirty-one gallons on sales to licensees within the state and on sales to licensees within the state of bottled and canned beer, including strong beer, shall pay a tax computed in gallons at the rate of one dollar and thirty cents per barrel of thirty-one gallons.

(b) Any brewery or beer distributor whose applicable tax payment is not postmarked by the twentieth day following the month of sale will be assessed a penalty at the rate of two percent per month or fraction thereof. Beer and strong beer shall be sold by breweries and distributors in sealed barrels or packages.

(c) The moneys collected under this subsection shall be distributed as follows: (i) Three-tenths of a percent shall be distributed to border areas under RCW 66.08.195; and (ii) of the remaining moneys: (A) Twenty percent shall be distributed to counties in the same manner as under RCW 66.08.200; and (B) eighty percent shall be distributed to incorporated cities and towns in the same manner as under RCW 66.08.210.

(d) Any licensed retailer authorized to purchase beer from a certificate of approval holder with a direct shipment endorsement or a brewery or microbrewery shall make monthly reports to the liquor control board on beer purchased during the preceding calendar month in the manner and upon such forms as may be prescribed by the board.

(2) An additional tax is imposed on all beer and strong beer subject to tax under subsection (1) of this section. The additional tax is equal to two dollars per barrel of thirty-one gallons. All revenues collected during any month from this additional tax shall be deposited in the state general fund by the twenty-fifth day of the following month.

(3)(a) An additional tax is imposed on all beer and strong beer subject to tax under subsection (1) of this section. The additional tax is equal to ninety-six cents per barrel of thirty-one gallons through June 30, 1995, two dollars and thirty-nine cents per barrel of thirty-one gallons for the period July 1, 1995, through June 30, 1997, and four dollars and seventy-eight cents per barrel of thirty-one gallons thereafter.

(b) The additional tax imposed under this subsection does not apply to the sale of the first sixty thousand barrels of beer each year by breweries that are entitled to a reduced rate of tax under 26 U.S.C. Sec. 5051, as existing on July 1, 1993, or such subsequent date as may be provided by the board by rule consistent with the purposes of this exemption.

(c) All revenues collected from the additional tax imposed under this subsection (3) shall be deposited in the state general fund.

(4) An additional tax is imposed on all beer and strong beer that is subject to tax under subsection (1) of this section that is in the first sixty thousand barrels of beer and strong beer by breweries that are entitled to a reduced rate of tax under 26 U.S.C. Sec. 5051, as existing on July 1, 1993, or such subsequent date as may be provided by the board by rule consistent with the purposes of the exemption under subsection (3)(b) of this section. The additional tax is equal to one dollar and forty-eight and two-tenths cents per barrel of thirty-one gallons. By the twenty-fifth day of the following month, three percent of the revenues collected from this additional tax shall be distributed to border areas under RCW 66.08.195 and the remaining moneys shall be transferred to the state general fund.

(5) The board may make refunds for all taxes paid on beer and strong beer exported from the state for use outside the state.

(6) The board may require filing with the board of a bond to be approved by it, in such amount as the board may fix, securing the payment of the tax. If any licensee fails to pay the tax when due, the board may forthwith suspend or cancel his or her license until all taxes are paid. [2009 c 479 § 43; 2006 c 302 § 7; 2003 c 167 § 5; 1999 c 281 § 14. Prior: 1997 c 451 § 1; 1997 c 321 § 16; 1995 c 232 § 4; 1994 sp.s. c 7 § 902 (Referendum Bill No. 43, approved November 8, 1994); 1993 c 492 § 311; 1989 c 271 § 502; 1983 2nd ex.s. c 3 § 11; 1982 1st ex.s. c 35 § 24; 1981 1st ex.s. c 5 § 16; 1965 ex.s. c 173 § 30; 1933 ex.s. c 62 § 24; RRS § 7306-24.]

Effective date—2009 c 479: See note following RCW 2.56.030.

Effective date—2006 c 302: See note following RCW 66.24.170.

Effective date—2003 c 167: See note following RCW 66.24.244.

Report to legislature—2003 c 167: See note following RCW 66.24.250.

Effective date—1997 c 451: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1997." [1997 c 451 § 5.]

Effective date—1997 c 321: See note following RCW 66.24.010.

Contingent partial referendum—1994 sp.s. c 7 §§ 901-909: See note following RCW 66.24.210.

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

Effective dates—1989 c 271: See note following RCW 66.28.200.

Severability—1989 c 271: See note following RCW 9.94A.510.

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Severability—Effective dates—1982 1st ex.s. c 35: See notes following RCW 82.08.020.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Severability—1965 ex.s. c 173: See note following RCW 82.98.030.

Giving away of liquor prohibited—Exceptions: RCW 66.28.040.

66.24.320 Beer and/or wine restaurant license—Containers—Fee—Caterer's endorsement. ***(Effective until July 1, 2011.)*** There shall be a beer and/or wine restaurant license to sell beer, including strong beer, or wine, or both, at retail, for consumption on the premises. A patron of the licensee may remove from the premises, recorked or recapped in its original container, any portion of wine that was purchased for consumption with a meal.

(1) The annual fee shall be two hundred twenty-one dollars for the beer license, two hundred twenty-one dollars for the wine license, or four hundred forty-two dollars for a combination beer and wine license.

(2)(a) The board may issue a caterer's endorsement to this license to allow the licensee to remove from the liquor stocks at the licensed premises, only those types of liquor that are authorized under the on-premises license privileges for sale and service at event locations at a specified date and, except as provided in subsection (3) of this section, place not currently licensed by the board. If the event is open to the public, it must be sponsored by a society or organization as defined by RCW 66.24.375. If attendance at the event is limited to members or invited guests of the sponsoring individual, society, or organization, the requirement that the sponsor must be a society or organization as defined by RCW 66.24.375 is waived. Cost of the endorsement is three hundred eighty-seven dollars.

(b) The holder of this license with a catering endorsement shall, if requested by the board, notify the board or its designee of the date, time, place, and location of any catered event. Upon request, the licensee shall provide to the board all necessary or requested information concerning the society or organization that will be holding the function at which the endorsed license will be utilized.

(c) The holder of this license with a caterer's endorsement may, under conditions established by the board, store liquor on the premises of another not licensed by the board so long as there is a written agreement between the licensee and the other party to provide for ongoing catering services, the agreement contains no exclusivity clauses regarding the alcoholic beverages to be served, and the agreement is filed with the board.

(d) The holder of this license with a caterer's endorsement may, under conditions established by the board, store liquor on other premises operated by the licensee so long as the other premises are owned or controlled by a leasehold interest by that licensee. A duplicate license may be issued for each additional premises. A license fee of twenty-two dollars shall be required for such duplicate licenses.

(3) Licensees under this section that hold a caterer's endorsement are allowed to use this endorsement on a domestic winery premises or on the premises of a passenger vessel and may store liquor at such premises under conditions established by the board under the following conditions:

(a) Agreements between the domestic winery or the passenger vessel, as the case may be, and the retail licensee shall be in writing, contain no exclusivity clauses regarding the alcoholic beverages to be served, and be filed with the board; and

(b) The domestic winery or passenger vessel, as the case may be, and the retail licensee shall be separately contracted and compensated by the persons sponsoring the event for their respective services.

(4) The holder of this license or its manager may furnish beer or wine to the licensee's employees free of charge as may be required for use in connection with instruction on beer and wine. The instruction may include the history, nature, values, and characteristics of beer or wine, the use of wine lists, and the methods of presenting, serving, storing, and handling beer or wine. The beer and/or wine licensee must use the beer or wine it obtains under its license for the sampling as part of the instruction. The instruction must be given on the premises of the beer and/or wine licensee.

(5) If the license is issued to a person who contracts with the Washington state ferry system to provide food and alcohol service on a designated ferry route, the license shall cover any vessel assigned to the designated route. A separate license is required for each designated ferry route. [2009 c 507 § 1; 2007 c 370 § 9. Prior: 2006 c 362 § 1; 2006 c 101 § 2; 2005 c 152 § 1; 2004 c 62 § 2; prior: 2003 c 345 § 1; 2003 c 167 § 6; 1998 c 126 § 4; 1997 c 321 § 18; 1995 c 232 § 6; 1991 c 42 § 1; 1987 c 458 § 11; 1981 1st ex.s. c 5 § 37; 1977 ex.s. c 9 § 1; 1969 c 117 § 1; 1967 ex.s. c 75 § 2; 1941 c 220 § 1; 1937 c 217 § 1 (23M) (adding new section 23-M to 1933 ex.s. c 62); Rem. Supp. 1941 § 7306-23M.]

Expiration date—2009 c 507: See note following RCW 66.08.225.

Effective date—2003 c 167: See note following RCW 66.24.244.

Report to legislature—2003 c 167: See note following RCW 66.24.250.

Effective date—1998 c 126: See note following RCW 66.20.010.

Effective date—1997 c 321: See note following RCW 66.24.010.

Severability—1987 c 458: See note following RCW 48.21.160.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Effective date—1967 ex.s. c 75: See note following RCW 66.08.180.

66.24.330 Tavern license—Fees. ***(Effective until July 1, 2011.)*** There shall be a beer and wine retailer's license to be designated as a tavern license to sell beer, including strong beer, or wine, or both, at retail, for consumption on the premises. Such licenses may be issued only to a person operating a tavern that may be frequented only by persons twenty-one years of age and older.

The annual fee for such license shall be two hundred twenty-one dollars for the beer license, two hundred twenty-one dollars for the wine license, or four hundred forty-two dollars for a combination beer and wine license. [2009 c 507 § 2; 2003 c 167 § 7; 1997 c 321 § 19; 1995 c 232 § 7; 1991 c 42 § 2; 1987 c 458 § 12; 1981 1st ex.s. c 5 § 38; 1977 ex.s. c 9 § 2; 1973 1st ex.s. c 209 § 15; 1967 ex.s. c 75 § 3; 1941 c 220 § 2; 1937 c 217 § 1 (23N) (adding new section 23-N to 1933 ex.s. c 62); Rem. Supp. 1941 § 7306-23N.]

Expiration date—2009 c 507: See note following RCW 66.08.225.

Effective date—2003 c 167: See note following RCW 66.24.244.

Report to legislature—2003 c 167: See note following RCW 66.24.250.

Effective date—1997 c 321: See note following RCW 66.24.010.

Severability—1987 c 458: See note following RCW 48.21.160.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Severability—Effective date—1973 1st ex.s. c 209: See notes following RCW 66.08.070.

Effective date—1967 ex.s. c 75: See note following RCW 66.08.180.

66.24.350 Snack bar license—Fee. ***(Effective until July 1, 2011.)*** There shall be a beer retailer's license to be designated as a snack bar license to sell beer by the opened bottle or can at retail, for consumption upon the premises only, such license to be issued to places where the sale of beer is not the principal business conducted; fee one hundred

thirty-eight dollars per year. [2009 c 507 § 3; 1997 c 321 § 20; 1991 c 42 § 3; 1981 1st ex.s. c 5 § 40; 1967 ex.s. c 75 § 5; 1937 c 217 § 1 (23P) (adding new section 23-P to 1933 ex.s. c 62); RRS § 7306-23P.]

Expiration date—2009 c 507: See note following RCW 66.08.225.

Effective date—1997 c 321: See note following RCW 66.24.010.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Effective date—1967 ex.s. c 75: See note following RCW 66.08.180.

66.24.354 Combined license—Sale of beer and wine for consumption on and off premises—Conditions—Fee. ***(Effective until July 1, 2011.)*** There shall be a beer and wine retailer's license that may be combined only with the on-premises licenses described in either RCW 66.24.320 or 66.24.330. The combined license permits the sale of beer and wine for consumption off the premises.

(1) Beer and wine sold for consumption off the premises must be in original sealed packages of the manufacturer or bottler.

(2) Beer may be sold to a purchaser in a sanitary container brought to the premises by the purchaser and filled at the tap by the retailer at the time of sale.

(3) Licensees holding this type of license also may sell malt liquor in kegs or other containers that are capable of holding four gallons or more of liquid and are registered in accordance with RCW 66.28.200.

(4) The board may impose conditions upon the issuance of this license to best protect and preserve the health, safety, and welfare of the public.

(5) The annual fee for this license shall be one hundred thirty-three dollars. [2009 c 507 § 4; 1997 c 321 § 21.]

Expiration date—2009 c 507: See note following RCW 66.08.225.

Effective date—1997 c 321: See note following RCW 66.24.010.

66.24.360 Grocery store license—Fees—Restricted license—Determination of public interest—Inventory—Endorsements. ***(Effective until July 1, 2011.)*** There shall be a beer and/or wine retailer's license to be designated as a grocery store license to sell beer, strong beer, and/or wine at retail in bottles, cans, and original containers, not to be consumed upon the premises where sold, at any store other than the state liquor stores.

(1) Licensees obtaining a written endorsement from the board may also sell malt liquor in kegs or other containers capable of holding less than five and one-half gallons of liquid.

(2) The annual fee for the grocery store license is one hundred sixty-six dollars for each store.

(3) The board shall issue a restricted grocery store license authorizing the licensee to sell beer and only table wine, if the board finds upon issuance or renewal of the license that the sale of strong beer or fortified wine would be against the public interest. In determining the public interest, the board shall consider at least the following factors:

(a) The likelihood that the applicant will sell strong beer or fortified wine to persons who are intoxicated;

(b) Law enforcement problems in the vicinity of the applicant's establishment that may arise from persons purchasing strong beer or fortified wine at the establishment; and

(c) Whether the sale of strong beer or fortified wine would be detrimental to or inconsistent with a government-operated or funded alcohol treatment or detoxification program in the area.

If the board receives no evidence or objection that the sale of strong beer or fortified wine would be against the public interest, it shall issue or renew the license without restriction, as applicable. The burden of establishing that the sale of strong beer or fortified wine by the licensee would be against the public interest is on those persons objecting.

(4) Licensees holding a grocery store license must maintain a minimum three thousand dollar inventory of food products for human consumption, not including pop, beer, strong beer, or wine.

(5) Upon approval by the board, the grocery store licensee may also receive an endorsement to permit the international export of beer, strong beer, and wine.

(a) Any beer, strong beer, or wine sold under this endorsement must have been purchased from a licensed beer or wine distributor licensed to do business within the state of Washington.

(b) Any beer, strong beer, and wine sold under this endorsement must be intended for consumption outside the state of Washington and the United States and appropriate records must be maintained by the licensee.

(c) A holder of this special endorsement to the grocery store license shall be considered not in violation of *RCW 66.28.010.

(d) Any beer, strong beer, or wine sold under this license must be sold at a price no less than the acquisition price paid by the holder of the license.

(e) The annual cost of this endorsement is five hundred fifty-three dollars and is in addition to the license fees paid by the licensee for a grocery store license.

(6) A grocery store licensee holding a snack bar license under RCW 66.24.350 may receive an endorsement to allow the sale of confections containing more than one percent but not more than ten percent alcohol by weight to persons twenty-one years of age or older. [2009 c 507 § 5; 2007 c 226 § 2; 2003 c 167 § 8; 1997 c 321 § 22; 1993 c 21 § 1; 1991 c 42 § 4; 1987 c 46 § 1; 1981 1st ex.s. c 5 § 41; 1967 ex.s. c 75 § 6; 1937 c 217 § 1 (23Q) (adding new section 23-Q to 1933 ex.s. c 62); RRS § 7306-23Q.]

***Reviser's note:** RCW 66.28.010 was amended by 2009 c 373 § 5 without cognizance of its repeal by 2009 c 506 § 11. For rule of construction concerning sections amended and repealed in the same legislative session, see RCW 1.12.025.

Expiration date—2009 c 507: See note following RCW 66.08.225.

Application to certain retailers—2003 c 167 §§ 8 and 9: "Sections 8 and 9 of this act apply to retailers who hold a restricted grocery store license or restricted beer and/or wine specialty shop license on or after July 1, 2003." [2003 c 167 § 12.]

Effective date—2003 c 167: See note following RCW 66.24.244.

Report to legislature—2003 c 167: See note following RCW 66.24.250.

Effective date—1997 c 321: See note following RCW 66.24.010.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Effective date—1967 ex.s. c 75: See note following RCW 66.08.180.

Employees under eighteen allowed to handle beer or wine: RCW 66.44.340.

66.24.371 Beer and/or wine specialty shop license—Fee—Samples—Restricted license—Determination of public interest—Inventory. ***(Effective until July 1, 2011.)*** (1) There shall be a beer and/or wine retailer's license to be designated as a beer and/or wine specialty shop license to sell beer, strong beer, and/or wine at retail in bottles, cans, and original containers, not to be consumed upon the premises where sold, at any store other than the state liquor stores. Licensees obtaining a written endorsement from the board may also sell malt liquor in kegs or other containers capable of holding four gallons or more of liquid. The annual fee for the beer and/or wine specialty shop license is one hundred eleven dollars for each store. The sale of any container holding four gallons or more must comply with RCW 66.28.200 and 66.28.220.

(2) Licensees under this section may provide, free or for a charge, single-serving samples of two ounces or less to customers for the purpose of sales promotion. Sampling activities of licensees under this section are subject to RCW *66.28.010 and 66.28.040 and the cost of sampling under this section may not be borne, directly or indirectly, by any manufacturer, importer, or distributor of liquor.

(3) The board shall issue a restricted beer and/or wine specialty shop license, authorizing the licensee to sell beer and only table wine, if the board finds upon issuance or renewal of the license that the sale of strong beer or fortified wine would be against the public interest. In determining the public interest, the board shall consider at least the following factors:

(a) The likelihood that the applicant will sell strong beer or fortified wine to persons who are intoxicated;

(b) Law enforcement problems in the vicinity of the applicant's establishment that may arise from persons purchasing strong beer or fortified wine at the establishment; and

(c) Whether the sale of strong beer or fortified wine would be detrimental to or inconsistent with a government-operated or funded alcohol treatment or detoxification program in the area.

If the board receives no evidence or objection that the sale of strong beer or fortified wine would be against the public interest, it shall issue or renew the license without restriction, as applicable. The burden of establishing that the sale of strong beer or fortified wine by the licensee would be against the public interest is on those persons objecting.

(4) Licensees holding a beer and/or wine specialty shop license must maintain a minimum three thousand dollar wholesale inventory of beer, strong beer, and/or wine. [2009 c 507 § 6; 2009 c 373 § 6; 2003 c 167 § 9; 1997 c 321 § 23.]

Reviser's note: *(1) RCW 66.28.010 was amended by 2009 c 373 § 5 without cognizance of its repeal by 2009 c 506 § 11. For rule of construction concerning sections amended and repealed in the same legislative session, see RCW 1.12.025.

(2) This section was amended by 2009 c 373 § 6 and by 2009 c 507 § 6, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Expiration date—2009 c 507: See note following RCW 66.08.225.

Application to certain retailers—2003 c 167 §§ 8 and 9: See note following RCW 66.24.360.

Effective date—2003 c 167: See note following RCW 66.24.244.

Report to legislature—2003 c 167: See note following RCW 66.24.250.

Effective date—1997 c 321: See note following RCW 66.24.010.

66.24.371 Beer and/or wine specialty shop license—Fee—Samples—Restricted license—Determination of public interest—Inventory. ***(Effective July 1, 2011.)*** (1) There shall be a beer and/or wine retailer's license to be designated as a beer and/or wine specialty shop license to sell beer, strong beer, and/or wine at retail in bottles, cans, and original containers, not to be consumed upon the premises where sold, at any store other than the state liquor stores. Licensees obtaining a written endorsement from the board may also sell malt liquor in kegs or other containers capable of holding four gallons or more of liquid. The annual fee for the beer and/or wine specialty shop license is one hundred dollars for each store. The sale of any container holding four gallons or more must comply with RCW 66.28.200 and 66.28.220.

(2) Licensees under this section may provide, free or for a charge, single-serving samples of two ounces or less to customers for the purpose of sales promotion. Sampling activities of licensees under this section are subject to RCW *66.28.010 and 66.28.040 and the cost of sampling under this section may not be borne, directly or indirectly, by any manufacturer, importer, or distributor of liquor.

(3) The board shall issue a restricted beer and/or wine specialty shop license, authorizing the licensee to sell beer and only table wine, if the board finds upon issuance or renewal of the license that the sale of strong beer or fortified wine would be against the public interest. In determining the public interest, the board shall consider at least the following factors:

(a) The likelihood that the applicant will sell strong beer or fortified wine to persons who are intoxicated;

(b) Law enforcement problems in the vicinity of the applicant's establishment that may arise from persons purchasing strong beer or fortified wine at the establishment; and

(c) Whether the sale of strong beer or fortified wine would be detrimental to or inconsistent with a government-operated or funded alcohol treatment or detoxification program in the area.

If the board receives no evidence or objection that the sale of strong beer or fortified wine would be against the public interest, it shall issue or renew the license without restriction, as applicable. The burden of establishing that the sale of strong beer or fortified wine by the licensee would be against the public interest is on those persons objecting.

(4) Licensees holding a beer and/or wine specialty shop license must maintain a minimum three thousand dollar wholesale inventory of beer, strong beer, and/or wine. [2009 c 373 § 6; 2003 c 167 § 9; 1997 c 321 § 23.]

***Reviser's note:** RCW 66.28.010 was amended by 2009 c 373 § 5 without cognizance of its repeal by 2009 c 506 § 11. For rule of construction concerning sections amended and repealed in the same legislative session, see RCW 1.12.025.

Application to certain retailers—2003 c 167 §§ 8 and 9: See note following RCW 66.24.360.

Effective date—2003 c 167: See note following RCW 66.24.244.

Report to legislature—2003 c 167: See note following RCW 66.24.250.

Effective date—1997 c 321: See note following RCW 66.24.010.

66.24.395 Interstate common carrier's licenses—Class CCI—Fees—Scope. ***(Effective until July 1, 2011.)*** (1)(a) There shall be a license that may be issued to corporations, associations, or persons operating as federally licensed commercial common passenger carriers engaged in interstate commerce, in or over territorial limits of the state of Washington on passenger trains, vessels, or airplanes. Such license shall permit the sale of spirituous liquor, wine, and beer at retail for passenger consumption within the state upon one such train passenger car, vessel, or airplane, while in or over the territorial limits of the state. Such license shall include the privilege of transporting into and storing within the state such liquor for subsequent retail sale to passengers in passenger train cars, vessels or airplanes. The fees for such master license shall be eight hundred twenty-nine dollars per annum (class CCI-1): PROVIDED, That upon payment of an additional sum of six dollars per annum per car, or vessel, or airplane, the privileges authorized by such license classes shall extend to additional cars, or vessels, or airplanes operated by the same licensee within the state, and a duplicate license for each additional car, or vessel, or airplane shall be issued: PROVIDED, FURTHER, That such licensee may make such sales and/or service upon cars, or vessels, or airplanes in emergency for not more than five consecutive days without such license: AND PROVIDED, FURTHER, That such license shall be valid only while such cars, or vessels, or airplanes are actively operated as common carriers for hire in interstate commerce and not while they are out of such common carrier service.

(b) Alcoholic beverages sold and/or served for consumption by such interstate common carriers while within or over the territorial limits of this state shall be subject to such board markup and state liquor taxes in an amount to approximate the revenue that would have been realized from such markup and taxes had the alcoholic beverages been purchased in Washington: PROVIDED, That the board's markup shall be applied on spirituous liquor only. Such common carriers shall report such sales and/or service and pay such markup and taxes in accordance with procedures prescribed by the board.

(2) Alcoholic beverages sold and delivered in this state to interstate common carriers for use under the provisions of this section shall be considered exported from the state, subject to the conditions provided in subsection (1)(b) of this section. The storage facilities for liquor within the state by common carriers licensed under this section shall be subject to written approval by the board. [2009 c 507 § 7; 1997 c 321 § 25; 1981 1st ex.s. c 5 § 44; 1975 1st ex.s. c 245 § 2.]

Expiration date—2009 c 507: See note following RCW 66.08.225.

Effective date—1997 c 321: See note following RCW 66.24.010.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

66.24.400 Liquor by the drink, spirits, beer, and wine restaurant license—Liquor by the bottle for hotel or club guests—Removing unconsumed liquor, when. ***(Effective until July 1, 2011.)*** (1) There shall be a retailer's license, to be known and designated as a spirits, beer, and wine restaurant license, to sell spirituous liquor by the individual glass, beer, and wine, at retail, for consumption on the premises, including mixed drinks and cocktails compounded or mixed on the premises only. A club licensed under chapter 70.62 RCW with overnight sleeping accommodations, that is licensed under this section may sell liquor by the bottle to registered guests of the club for consumption in guest rooms, hospitality rooms, or at banquets in the club. A patron of a bona fide restaurant or club licensed under this section may remove from the premises recorked or recapped in its original container any portion of wine which was purchased for consumption with a meal, and registered guests who have purchased liquor from the club by the bottle may remove from the premises any unused portion of such liquor in its original container. Such license may be issued only to bona fide restaurants and clubs, and to dining, club and buffet cars on passenger trains, and to dining places on passenger boats and airplanes, and to dining places at civic centers with facilities for sports, entertainment, and conventions, and to such other establishments operated and maintained primarily for the benefit of tourists, vacationers and travelers as the board shall determine are qualified to have, and in the discretion of the board should have, a spirits, beer, and wine restaurant license under the provisions and limitations of this title.

(2) The board may issue an endorsement to the spirits, beer, and wine restaurant license that allows the holder of a spirits, beer, and wine restaurant license to sell bottled wine for off-premises consumption. Spirits and beer may not be sold for off-premises consumption under this section except as provided in subsection (4) of this section. The annual fee for the endorsement under this subsection is one hundred thirty-three dollars.

(3) The holder of a spirits, beer, and wine license or its manager may furnish beer, wine, or spirituous liquor to the licensee's employees free of charge as may be required for use in connection with instruction on beer, wine, or spirituous liquor. The instruction may include the history, nature, values, and characteristics of beer, wine, or spirituous liquor, the use of wine lists, and the methods of presenting, serving, storing, and handling beer, wine, and spirituous liquor. The spirits, beer, and wine restaurant licensee must use the beer, wine, or spirituous liquor it obtains under its license for the sampling as part of the instruction. The instruction must be given on the premises of the spirits, beer, and wine restaurant licensee.

(4) The board may issue an endorsement to the spirits, beer, and wine restaurant license that allows the holder of a spirits, beer, and wine restaurant license to sell for off-premises consumption malt liquor in kegs or other containers that are capable of holding four gallons or more of liquid and are registered in accordance with RCW 66.28.200. The annual fee for the endorsement under this subsection is one hundred thirty-three dollars. [2009 c 507 § 8; 2008 c 41 § 10. Prior: 2007 c 370 § 13; 2007 c 53 § 1; 2005 c 152 § 2; 2001 c 199 § 4; 1998 c 126 § 5; 1997 c 321 § 26; 1987 c 196 § 1; 1986 c 208 § 1; 1981 c 94 § 2; 1977 ex.s. c 9 § 4; 1971 ex.s. c 208 § 1; 1949 c 5 § 1 (adding new section 23-S-1 to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-23S-1.]

Expiration date—2009 c 507: See note following RCW 66.08.225.

Effective date—2008 c 41 §§ 3, 10, and 11: See note following RCW 66.20.310.

Effective date—2007 c 370 §§ 10-20: See note following RCW 66.04.010.

Effective date—1998 c 126: See note following RCW 66.20.010.

Effective date—1997 c 321: See note following RCW 66.24.010.

Effective date—1986 c 208: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of state government and its existing public institutions, and shall take effect on May 1, 1986." [1986 c 208 § 2.]

Severability—1949 c 5: See RCW 66.98.080.

66.24.420 Liquor by the drink, spirits, beer, and wine restaurant license—Schedule of fees—Location—Number of licenses—Caterer's endorsement. ***(Effective until July 1, 2011.)*** (1) The spirits, beer, and wine restaurant license shall be issued in accordance with the following schedule of annual fees:

(a) The annual fee for a spirits, beer, and wine restaurant license shall be graduated according to the dedicated dining area and type of service provided as follows:

Less than 50% dedicated dining area	$2,210
50% or more dedicated dining area	$1,768
Service bar only	$1,105

(b) The annual fee for the license when issued to any other spirits, beer, and wine restaurant licensee outside of incorporated cities and towns shall be prorated according to the calendar quarters, or portion thereof, during which the licensee is open for business, except in case of suspension or revocation of the license.

(c) Where the license shall be issued to any corporation, association or person operating a bona fide restaurant in an airport terminal facility providing service to transient passengers with more than one place where liquor is to be dispensed and sold, such license shall be issued upon the payment of the annual fee, which shall be a master license and shall permit such sale within and from one such place. Such license may be extended to additional places on the premises at the discretion of the board and a duplicate license may be issued for each such additional place. The holder of a master license for a restaurant in an airport terminal facility must maintain in a substantial manner at least one place on the premises for preparing, cooking, and serving of complete meals, and such food service shall be available on request in other licensed places on the premises. An additional license fee of twenty-five percent of the annual master license fee shall be required for such duplicate licenses.

(d) Where the license shall be issued to any corporation, association, or person operating dining places at a publicly or privately owned civic or convention center with facilities for sports, entertainment, or conventions, or a combination thereof, with more than one place where liquor is to be dispensed and sold, such license shall be issued upon the payment of the annual fee, which shall be a master license and shall permit such sale within and from one such place. Such license may be extended to additional places on the premises at the discretion of the board and a duplicate license may be issued for each such additional place. The holder of a master license for a dining place at such a publicly or privately owned civic or convention center must maintain in a substantial manner at least one place on the premises for preparing, cooking, and serving of complete meals, and food service shall be available on request in other licensed places on the premises. An additional license fee of eleven dollars shall be required for such duplicate licenses.

(2) The board, so far as in its judgment is reasonably possible, shall confine spirits, beer, and wine restaurant licenses to the business districts of cities and towns and other communities, and not grant such licenses in residential districts, nor within the immediate vicinity of schools, without being limited in the administration of this subsection to any specific distance requirements.

(3) The board shall have discretion to issue spirits, beer, and wine restaurant licenses outside of cities and towns in the state of Washington. The purpose of this subsection is to enable the board, in its discretion, to license in areas outside of cities and towns and other communities, establishments which are operated and maintained primarily for the benefit of tourists, vacationers and travelers, and also golf and country clubs, and common carriers operating dining, club and buffet cars, or boats.

(4) The combined total number of spirits, beer, and wine nightclub licenses, and spirits, beer, and wine restaurant licenses issued in the state of Washington by the board, not including spirits, beer, and wine private club licenses, shall not in the aggregate at any time exceed one license for each one thousand two hundred of population in the state, determined according to the yearly population determination developed by the office of financial management pursuant to RCW 43.62.030.

(5) Notwithstanding the provisions of subsection (4) of this section, the board shall refuse a spirits, beer, and wine restaurant license to any applicant if in the opinion of the board the spirits, beer, and wine restaurant licenses already granted for the particular locality are adequate for the reasonable needs of the community.

(6)(a) The board may issue a caterer's endorsement to this license to allow the licensee to remove the liquor stocks at the licensed premises, for use as liquor for sale and service at event locations at a specified date and, except as provided in subsection (7) of this section, place not currently licensed by the board. If the event is open to the public, it must be sponsored by a society or organization as defined by RCW 66.24.375. If attendance at the event is limited to members or invited guests of the sponsoring individual, society, or organization, the requirement that the sponsor must be a society or organization as defined by RCW 66.24.375 is waived. Cost of the endorsement is three hundred eighty-seven dollars.

(b) The holder of this license with a catering endorsement shall, if requested by the board, notify the board or its designee of the date, time, place, and location of any catered event. Upon request, the licensee shall provide to the board all necessary or requested information concerning the society or organization that will be holding the function at which the endorsed license will be utilized.

(c) The holder of this license with a caterer's endorsement may, under conditions established by the board, store liquor on the premises of another not licensed by the board so long as there is a written agreement between the licensee and the other party to provide for ongoing catering services, the agreement contains no exclusivity clauses regarding the alcoholic beverages to be served, and the agreement is filed with the board.

(d) The holder of this license with a caterer's endorsement may, under conditions established by the board, store liquor on other premises operated by the licensee so long as the other premises are owned or controlled by a leasehold interest by that licensee. A duplicate license may be issued for each additional premises. A license fee of twenty-two dollars shall be required for such duplicate licenses.

(7) Licensees under this section that hold a caterer's endorsement are allowed to use this endorsement on a domestic winery premises or on the premises of a passenger vessel and may store liquor at such premises under conditions established by the board under the following conditions:

(a) Agreements between the domestic winery or passenger vessel, as the case may be, and the retail licensee shall be in writing, contain no exclusivity clauses regarding the alcoholic beverages to be served, and be filed with the board; and

(b) The domestic winery or passenger vessel, as the case may be, and the retail licensee shall be separately contracted and compensated by the persons sponsoring the event for their respective services. [2009 c 507 § 9; 2009 c 271 § 7. Prior: 2007 c 370 § 19; 2007 c 370 § 8; prior: 2006 c 101 § 3; 2006 c 85 § 1; 2004 c 62 § 3; 2003 c 345 § 2; 1998 c 126 § 6; 1997 c 321 § 27; 1996 c 218 § 4; 1995 c 55 § 1; 1981 1st ex.s. c 5 § 45; 1979 c 87 § 1; 1977 ex.s. c 219 § 4; 1975 1st ex.s. c 245 § 1; 1971 ex.s. c 208 § 2; 1970 ex.s. c 13 § 2; prior: 1969 ex.s. c 178 § 6; 1969 ex.s. c 136 § 1; 1965 ex.s. c 143 § 3; 1949 c 5 § 3 (adding new section 23-S-3 to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-23S-3.]

Reviser's note: This section was amended by 2009 c 271 § 7 and by 2009 c 507 § 9, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Expiration date—2009 c 507: See note following RCW 66.08.225.

Effective date—2007 c 370 §§ 10-20: See note following RCW 66.04.010.

Effective date—1998 c 126: See note following RCW 66.20.010.

Effective date—1997 c 321: See note following RCW 66.24.010.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Severability—1949 c 5: See RCW 66.98.080.

66.24.420 Liquor by the drink, spirits, beer, and wine restaurant license—Schedule of fees—Location—Number of licenses—Caterer's endorsement. ***(Effective July 1, 2011.)*** (1) The spirits, beer, and wine restaurant license shall be issued in accordance with the following schedule of annual fees:

(a) The annual fee for a spirits, beer, and wine restaurant license shall be graduated according to the dedicated dining area and type of service provided as follows:

Less than 50% dedicated dining area	$2,000
50% or more dedicated dining area	$1,600
Service bar only	$1,000

(b) The annual fee for the license when issued to any other spirits, beer, and wine restaurant licensee outside of incorporated cities and towns shall be prorated according to the calendar quarters, or portion thereof, during which the licensee is open for business, except in case of suspension or revocation of the license.

(c) Where the license shall be issued to any corporation, association or person operating a bona fide restaurant in an airport terminal facility providing service to transient passengers with more than one place where liquor is to be dispensed and sold, such license shall be issued upon the payment of the annual fee, which shall be a master license and shall permit such sale within and from one such place. Such license may be extended to additional places on the premises at the discretion of the board and a duplicate license may be issued for each such additional place. The holder of a master license for a restaurant in an airport terminal facility must maintain in a substantial manner at least one place on the premises for preparing, cooking, and serving of complete meals, and such food service shall be available on request in other licensed places on the premises. An additional license fee of twenty-five percent of the annual master license fee shall be required for such duplicate licenses.

(d) Where the license shall be issued to any corporation, association, or person operating dining places at a publicly or privately owned civic or convention center with facilities for sports, entertainment, or conventions, or a combination thereof, with more than one place where liquor is to be dispensed and sold, such license shall be issued upon the payment of the annual fee, which shall be a master license and shall permit such sale within and from one such place. Such license may be extended to additional places on the premises at the discretion of the board and a duplicate license may be issued for each such additional place. The holder of a master license for a dining place at such a publicly or privately owned civic or convention center must maintain in a substantial manner at least one place on the premises for preparing, cooking, and serving of complete meals, and food service shall be available on request in other licensed places on the premises. An additional license fee of ten dollars shall be required for such duplicate licenses.

(2) The board, so far as in its judgment is reasonably possible, shall confine spirits, beer, and wine restaurant licenses to the business districts of cities and towns and other communities, and not grant such licenses in residential districts, nor within the immediate vicinity of schools, without being limited in the administration of this subsection to any specific distance requirements.

(3) The board shall have discretion to issue spirits, beer, and wine restaurant licenses outside of cities and towns in the state of Washington. The purpose of this subsection is to enable the board, in its discretion, to license in areas outside of cities and towns and other communities, establishments which are operated and maintained primarily for the benefit of tourists, vacationers and travelers, and also golf and country clubs, and common carriers operating dining, club and buffet cars, or boats.

(4) The combined total number of spirits, beer, and wine nightclub licenses, and spirits, beer, and wine restaurant licenses issued in the state of Washington by the board, not including spirits, beer, and wine private club licenses, shall not in the aggregate at any time exceed one license for each one thousand two hundred of population in the state, determined according to the yearly population determination developed by the office of financial management pursuant to RCW 43.62.030.

(5) Notwithstanding the provisions of subsection (4) of this section, the board shall refuse a spirits, beer, and wine restaurant license to any applicant if in the opinion of the board the spirits, beer, and wine restaurant licenses already granted for the particular locality are adequate for the reasonable needs of the community.

(6)(a) The board may issue a caterer's endorsement to this license to allow the licensee to remove the liquor stocks at the licensed premises, for use as liquor for sale and service at event locations at a specified date and, except as provided in subsection (7) of this section, place not currently licensed by the board. If the event is open to the public, it must be sponsored by a society or organization as defined by RCW 66.24.375. If attendance at the event is limited to members or invited guests of the sponsoring individual, society, or organization, the requirement that the sponsor must be a society or organization as defined by RCW 66.24.375 is waived. Cost of the endorsement is three hundred fifty dollars.

(b) The holder of this license with a catering endorsement shall, if requested by the board, notify the board or its designee of the date, time, place, and location of any catered event. Upon request, the licensee shall provide to the board all necessary or requested information concerning the society or organization that will be holding the function at which the endorsed license will be utilized.

(c) The holder of this license with a caterer's endorsement may, under conditions established by the board, store liquor on the premises of another not licensed by the board so long as there is a written agreement between the licensee and the other party to provide for ongoing catering services, the agreement contains no exclusivity clauses regarding the alcoholic beverages to be served, and the agreement is filed with the board.

(d) The holder of this license with a caterer's endorsement may, under conditions established by the board, store liquor on other premises operated by the licensee so long as the other premises are owned or controlled by a leasehold interest by that licensee. A duplicate license may be issued for each additional premises. A license fee of twenty dollars shall be required for such duplicate licenses.

(7) Licensees under this section that hold a caterer's endorsement are allowed to use this endorsement on a domestic winery premises or on the premises of a passenger vessel and may store liquor at such premises under conditions established by the board under the following conditions:

(a) Agreements between the domestic winery or passenger vessel, as the case may be, and the retail licensee shall be in writing, contain no exclusivity clauses regarding the alcoholic beverages to be served, and be filed with the board; and

(b) The domestic winery or passenger vessel, as the case may be, and the retail licensee shall be separately contracted and compensated by the persons sponsoring the event for their respective services. [2009 c 271 § 7. Prior: 2007 c 370 § 19; 2007 c 370 § 8; prior: 2006 c 101 § 3; 2006 c 85 § 1; 2004 c 62 § 3; 2003 c 345 § 2; 1998 c 126 § 6; 1997 c 321 § 27; 1996 c 218 § 4; 1995 c 55 § 1; 1981 1st ex.s. c 5 § 45; 1979 c 87 § 1; 1977 ex.s. c 219 § 4; 1975 1st ex.s. c 245 § 1; 1971 ex.s. c 208 § 2; 1970 ex.s. c 13 § 2; prior: 1969 ex.s. c 178 § 6; 1969 ex.s. c 136 § 1; 1965 ex.s. c 143 § 3; 1949 c 5 § 3 (adding new section 23-S-3 to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-23S-3.]

Effective date—2007 c 370 §§ 10-20: See note following RCW 66.04.010.

Effective date—1998 c 126: See note following RCW 66.20.010.

Effective date—1997 c 321: See note following RCW 66.24.010.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Severability—1949 c 5: See RCW 66.98.080.

66.24.425 Liquor by the drink, spirits, beer, and wine restaurant license—Restaurants not serving the general public. ***(Effective until July 1, 2011.)*** (1) The board may, in its discretion, issue a spirits, beer, and wine restaurant license to a business which qualifies as a "restaurant" as that term is defined in RCW 66.24.410 in all respects except that the business does not serve the general public but, through membership qualification, selectively restricts admission to the business. For purposes of RCW 66.24.400 and 66.24.420, all licenses issued under this section shall be considered spirits, beer, and wine restaurant licenses and shall be subject to all requirements, fees, and qualifications in this title, or in rules adopted by the board, as are applicable to spirits, beer, and wine restaurant licenses generally except that no service to the general public may be required.

(2) No license shall be issued under this section to a business:

(a) Which shall not have been in continuous operation for at least one year immediately prior to the date of its application; or

(b) Which denies membership or admission to any person because of race, creed, color, national origin, sex, or the presence of any sensory, mental, or physical handicap.

(3) The board may issue an endorsement to the spirits, beer, and wine restaurant license issued under this section that allows up to forty nonclub, member-sponsored events using club liquor. Visitors and guests may attend these events only by invitation of the sponsoring member or members. These events may not be open to the general public. The fee for the endorsement is an annual fee of nine hundred ninety-five dollars. Upon the board's request, the holder of the endorsement must provide the board or the board's designee with the following information at least seventy-two hours before the event: The date, time, and location of the event; the name of the sponsor of the event; and a brief description of the purpose of the event.

(4) The board may issue an endorsement to the spirits, beer, and wine restaurant license that allows the holder of a spirits, beer, and wine restaurant license to sell for off-premises consumption wine vinted and bottled in the state of Washington and carrying a label exclusive to the license holder selling the wine. Spirits and beer may not be sold for off-premises consumption under this section. The annual fee for the endorsement under this section is one hundred thirty-three dollars. [2009 c 507 § 10. Prior: 2001 c 199 § 3; 2001 c 198 § 1; 1998 c 126 § 7; 1997 c 321 § 28; 1982 c 85 § 3.]

Expiration date—2009 c 507: See note following RCW 66.08.225.

Effective date—1998 c 126: See note following RCW 66.20.010.

Effective date—1997 c 321: See note following RCW 66.24.010.

66.24.440 Liquor by the drink, spirits, beer, and wine restaurant, spirits, beer, and wine private club, hotel, spirits, beer, and wine nightclub, and sports entertain-

ment facility license—Purchase of liquor by licensees—Discount. Each spirits, beer, and wine restaurant, spirits, beer, and wine private club, hotel, spirits, beer, and wine nightclub, and sports entertainment facility licensee shall be entitled to purchase any spirituous liquor items salable under such license from the board at a discount of not less than fifteen percent from the retail price fixed by the board, together with all taxes. [2009 c 271 § 8; 2007 c 370 § 20; 1998 c 126 § 8; 1997 c 321 § 29; 1949 c 5 § 5 (adding new section 23-S-5 to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-23S-5.]

Effective date—2007 c 370 §§ 10-20: See note following RCW 66.04.010.

Effective date—1998 c 126: See note following RCW 66.20.010.

Effective date—1997 c 321: See note following RCW 66.24.010.

Severability—1949 c 5: See RCW 66.98.080.

66.24.450 Liquor by the drink, spirits, beer, and wine private club license—Qualifications—Fee. ***(Effective until July 1, 2011.)*** (1) No club shall be entitled to a spirits, beer, and wine private club license:

(a) Unless such private club has been in continuous operation for at least one year immediately prior to the date of its application for such license;

(b) Unless the private club premises be constructed and equipped, conducted, managed, and operated to the satisfaction of the board and in accordance with this title and the regulations made thereunder;

(c) Unless the board shall have determined pursuant to any regulations made by it with respect to private clubs, that such private club is a bona fide private club; it being the intent of this section that license shall not be granted to a club which is, or has been, primarily formed or activated to obtain a license to sell liquor, but solely to a bona fide private club, where the sale of liquor is incidental to the main purposes of the spirits, beer, and wine private club, as defined in RCW 66.04.010(8).

(2) The annual fee for a spirits, beer, and wine private club license, whether inside or outside of an incorporated city or town, is seven hundred ninety-six dollars per year.

(3) The board may issue an endorsement to the spirits, beer, and wine private club license that allows up to forty nonclub, member-sponsored events using club liquor. Visitors and guests may attend these events only by invitation of the sponsoring member or members. These events may not be open to the general public. The fee for the endorsement shall be an annual fee of nine hundred ninety-five dollars. Upon the board's request, the holder of the endorsement must provide the board or the board's designee with the following information at least seventy-two hours prior to the event: The date, time, and location of the event; the name of the sponsor of the event; and a brief description of the purpose of the event.

(4) The board may issue an endorsement to the spirits, beer, and wine private club license that allows the holder of a spirits, beer, and wine private club license to sell bottled wine for off-premises consumption. Spirits and beer may not be sold for off-premises consumption under this section. The annual fee for the endorsement under this section is one hundred thirty-three dollars. [2009 c 507 § 11; 2009 c 373 § 2; 2001 c 199 § 1; 1999 c 281 § 5. Prior: 1998 c 126 § 9; 1998 c 114 § 1; 1997 c 321 § 30; 1981 1st ex.s. c 5 § 18; 1949 c 5 § 6; 1937 c 217 § 1 (23T) (adding new section 23-T to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-23T.]

Reviser's note: This section was amended by 2009 c 373 § 2 and by 2009 c 507 § 11, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Expiration date—2009 c 507: See note following RCW 66.08.225.

Effective date—1998 c 126: See note following RCW 66.20.010.

Effective date—1998 c 114: "This act takes effect July 1, 1998." [1998 c 114 § 3.]

Effective date—1997 c 321: See note following RCW 66.24.010.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Severability—1949 c 5: See RCW 66.98.080.

66.24.450 Liquor by the drink, spirits, beer, and wine private club license—Qualifications—Fee. ***(Effective July 1, 2011.)*** (1) No club shall be entitled to a spirits, beer, and wine private club license:

(a) Unless such private club has been in continuous operation for at least one year immediately prior to the date of its application for such license;

(b) Unless the private club premises be constructed and equipped, conducted, managed, and operated to the satisfaction of the board and in accordance with this title and the regulations made thereunder;

(c) Unless the board shall have determined pursuant to any regulations made by it with respect to private clubs, that such private club is a bona fide private club; it being the intent of this section that license shall not be granted to a club which is, or has been, primarily formed or activated to obtain a license to sell liquor, but solely to a bona fide private club, where the sale of liquor is incidental to the main purposes of the spirits, beer, and wine private club, as defined in RCW 66.04.010(8).

(2) The annual fee for a spirits, beer, and wine private club license, whether inside or outside of an incorporated city or town, is seven hundred twenty dollars per year.

(3) The board may issue an endorsement to the spirits, beer, and wine private club license that allows up to forty nonclub, member-sponsored events using club liquor. Visitors and guests may attend these events only by invitation of the sponsoring member or members. These events may not be open to the general public. The fee for the endorsement shall be an annual fee of nine hundred dollars. Upon the board's request, the holder of the endorsement must provide the board or the board's designee with the following information at least seventy-two hours prior to the event: The date, time, and location of the event; the name of the sponsor of the event; and a brief description of the purpose of the event.

(4) The board may issue an endorsement to the spirits, beer, and wine private club license that allows the holder of a spirits, beer, and wine private club license to sell bottled wine for off-premises consumption. Spirits and beer may not be sold for off-premises consumption under this section. The annual fee for the endorsement under this section is one hundred twenty dollars. [2009 c 373 § 2; 2001 c 199 § 1; 1999 c 281 § 5. Prior: 1998 c 126 § 9; 1998 c 114 § 1; 1997 c 321 § 30; 1981 1st ex.s. c 5 § 18; 1949 c 5 § 6; 1937 c 217 § 1 (23T)

(adding new section 23-T to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-23T.]

Effective date—1998 c 126: See note following RCW 66.20.010.

Effective date—1998 c 114: "This act takes effect July 1, 1998." [1998 c 114 § 3.]

Effective date—1997 c 321: See note following RCW 66.24.010.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Severability—1949 c 5: See RCW 66.98.080.

66.24.452 Private club beer and wine license—Fee. ***(Effective until July 1, 2011.)*** (1) There shall be a beer and wine license to be issued to a private club for sale of beer, strong beer, and wine for on-premises consumption.

(2) Beer, strong beer, and wine sold by the licensee may be on tap or by open bottles or cans.

(3) The fee for the private club beer and wine license is one hundred ninety-nine dollars per year.

(4) The board may issue an endorsement to the private club beer and wine license that allows the holder of a private club beer and wine license to sell bottled wine for off-premises consumption. Spirits, strong beer, and beer may not be sold for off-premises consumption under this section. The annual fee for the endorsement under this section is one hundred thirty-three dollars. [2009 c 507 § 12; 2009 c 373 § 3; 2003 c 167 § 10; 2001 c 199 § 2; 1997 c 321 § 31.]

Reviser's note: This section was amended by 2009 c 373 § 3 and by 2009 c 507 § 12, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Expiration date—2009 c 507: See note following RCW 66.08.225.

Effective date—2003 c 167: See note following RCW 66.24.244.

Report to legislature—2003 c 167: See note following RCW 66.24.250.

Effective date—1997 c 321: See note following RCW 66.24.010.

66.24.452 Private club beer and wine license—Fee. ***(Effective July 1, 2011.)*** (1) There shall be a beer and wine license to be issued to a private club for sale of beer, strong beer, and wine for on-premises consumption.

(2) Beer, strong beer, and wine sold by the licensee may be on tap or by open bottles or cans.

(3) The fee for the private club beer and wine license is one hundred eighty dollars per year.

(4) The board may issue an endorsement to the private club beer and wine license that allows the holder of a private club beer and wine license to sell bottled wine for off-premises consumption. Spirits, strong beer, and beer may not be sold for off-premises consumption under this section. The annual fee for the endorsement under this section is one hundred twenty dollars. [2009 c 373 § 3; 2003 c 167 § 10; 2001 c 199 § 2; 1997 c 321 § 31.]

Effective date—2003 c 167: See note following RCW 66.24.244.

Report to legislature—2003 c 167: See note following RCW 66.24.250.

Effective date—1997 c 321: See note following RCW 66.24.010.

66.24.580 Public house license—Fees—Limitations. ***(Effective until July 1, 2011.)*** (1) A public house license allows the licensee:

(a) To annually manufacture no less than two hundred fifty gallons and no more than two thousand four hundred barrels of beer on the licensed premises;

(b) To sell product, that is produced on the licensed premises, at retail on the licensed premises for consumption on the licensed premises;

(c) To sell beer or wine not of its own manufacture for consumption on the licensed premises if the beer or wine has been purchased from a licensed beer or wine wholesaler;

(d) To hold other classes of retail licenses at other locations without being considered in violation of *RCW 66.28.010;

(e) To apply for and, if qualified and upon the payment of the appropriate fee, be licensed as a spirits, beer, and wine restaurant to do business at the same location. This fee is in addition to the fee charged for the basic public house license.

(2) While the holder of a public house license is not to be considered in violation of the prohibitions of ownership or interest in a retail license in *RCW 66.28.010, the remainder of *RCW 66.28.010 applies to such licensees.

(3) A public house licensee must pay all applicable taxes on production as are required by law, and all appropriate taxes must be paid for any product sold at retail on the licensed premises.

(4) The employees of the licensee must comply with the provisions of mandatory server training in RCW 66.20.300 through 66.20.350.

(5) The holder of a public house license may not hold a wholesaler's or importer's license, act as the agent of another manufacturer, wholesaler, or importer, or hold a brewery or winery license.

(6) The annual license fee for a public house is one thousand one hundred five dollars.

(7) The holder of a public house license may hold other licenses at other locations if the locations are approved by the board.

(8) Existing holders of annual retail liquor licenses may apply for and, if qualified, be granted a public house license at one or more of their existing liquor licensed locations without discontinuing business during the application or construction stages. [2009 c 507 § 13; 1999 c 281 § 6; 1996 c 224 § 2.]

***Reviser's note:** RCW 66.28.010 was amended by 2009 c 373 § 5 without cognizance of its repeal by 2009 c 506 § 11. For rule of construction concerning sections amended and repealed in the same legislative session, see RCW 1.12.025.

Expiration date—2009 c 507: See note following RCW 66.08.225.

Intent—1996 c 224: "It is the intent of the legislature that holders of annual on-premises retail liquor licenses be allowed to operate manufacturing facilities on those premises. This privilege is viewed as a means of enhancing and meeting the needs of the licensees' patrons without being in violation of the tied-house statute prohibitions of RCW 66.28.010. Furthermore, it is the intention of the legislature that this type of business not be viewed as primarily a manufacturing facility. Rather, the public house licensee shall be viewed as an annual retail licensee who is making malt liquor for on-premises consumption by the patrons of the licensed premises." [1996 c 224 § 1.]

66.24.600 Nightclub license. (1) There shall be a spirits, beer, and wine nightclub license to sell spirituous liquor by the drink, beer, and wine at retail, for consumption on the licensed premises.

(2) The license may be issued only to a person whose business includes the sale and service of alcohol to the person's customers, has food sales and service incidental to the sale and service of alcohol, and has primary business hours between 9:00 p.m. and 2:00 a.m.

(3) Minors may be allowed on the licensed premises but only in areas where alcohol is not served or consumed.

(4) The annual fee for this license is two thousand dollars. The fee for the license shall be reviewed from time to time and set at such a level sufficient to defray the cost of licensing and enforcing this licensing program. The fee shall be fixed by rule adopted by the board in accordance with the provisions of the administrative procedure act, chapter 34.05 RCW.

(5) Local governments may petition the board to request that further restrictions be imposed on a spirits, beer, and wine nightclub license in the interest of public safety. Examples of further restrictions a local government may request are: No minors allowed on the entire premises, submitting a security plan, or signing a good neighbor agreement with the local government.

(6) The total number of spirts, beer, and wine nightclub licenses are subject to the requirements of RCW 66.24.420(4). However, the board shall refuse a spirits, beer, and wine nightclub license to any applicant if the board determines that the spirits, beer, and wine nightclub licenses already granted for the particular locality are adequate for the reasonable needs of the community.

(7) The board may adopt rules to implement this section. [2009 c 271 § 1.]

66.24.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. ***(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 146.]

Chapter 66.28 RCW
MISCELLANEOUS REGULATORY PROVISIONS

Sections

66.28.010 Manufacturers, importers, distributors, and authorized representatives barred from interest in retail business or location—Advances prohibited—"Financial interest" defined—Exceptions.
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66.28.010 Manufacturers, importers, distributors, and authorized representatives barred from interest in retail business or location—Advances prohibited—"Financial interest" defined—Exceptions. (1)(a) No manufacturer, importer, distributor, or authorized representative, or person financially interested, directly or indirectly, in such business; whether resident or nonresident, shall have any financial interest, direct or indirect, in any licensed retail business, unless the retail business is owned by a corporation in which a manufacturer or importer has no direct stock ownership and there are no interlocking officers and directors, the retail license is held by a corporation that is not owned directly or indirectly by a manufacturer or importer, the sales of liquor are incidental to the primary activity of operating the property as a hotel, alcoholic beverages produced by the manufacturer or importer or their subsidiaries are not sold at the licensed premises, and the board reviews the ownership and proposed method of operation of all involved entities and determines that there will not be an unacceptable level of control or undue influence over the operation or the retail licensee; nor shall any manufacturer, importer, distributor, or authorized representative own any of the property upon which such licensed persons conduct their business; nor shall any such licensed person, under any arrangement whatsoever, conduct his or her business upon property in which any manufacturer, importer, distributor, or authorized representative has any interest unless title to that property is owned by a corporation in which a manufacturer has no direct stock ownership and there are no interlocking officers or directors, the retail license is held by a corporation that is not owned directly or indirectly by the manufacturer, the sales of liquor are incidental to the primary activity of operating the property either as a hotel or as an amphitheater offering live musical and similar live entertainment activities to the public, alcoholic beverages produced by the manufacturer or any of its subsidiaries are not sold at the licensed premises, and the board reviews the ownership and proposed method of operation of all involved entities and determines that there will not be an unacceptable level of control or undue influence over the operation of the retail licensee. Except as provided in subsection (3) of this section, no manufacturer, importer, distributor, or authorized representative shall advance moneys or moneys' worth to a licensed person under an arrangement, nor shall such licensed person receive, under an arrangement, an advance of moneys or moneys' worth. "Person" as used in this section only shall not include those state or federally chartered banks, state or federally chartered savings and loan associations, state or federally chartered mutual savings banks, or institutional investors which are not controlled directly or indirectly by a manufacturer, importer, distributor, or authorized representative as long as the bank, savings and loan association, or institutional investor does not influence or attempt to influence the purchasing practices of the retailer with respect to alcoholic beverages. Except as otherwise provided in this section, no manufacturer, importer, distributor, or authorized representative shall be eligible to receive or hold a retail license under this title, nor shall such manufacturer, importer, distributor, or authorized representative sell at retail any liquor as herein defined. A corporation granted an exemption under this subsection may use debt instruments issued in connection with financing construction or operations of its facilities.

(b) Nothing in this section shall prohibit a licensed domestic brewery or microbrewery from being licensed as a retailer pursuant to chapter 66.24 RCW for the purpose of selling beer or wine at retail on the brewery premises and at one additional off-site retail only location and nothing in this section shall prohibit a domestic winery from being licensed as a retailer pursuant to chapter 66.24 RCW for the purpose of selling beer or wine at retail

on the winery premises. Such beer and wine so sold at retail shall be subject to the taxes imposed by RCW 66.24.290 and 66.24.210 and to reporting and bonding requirements as prescribed by regulations adopted by the board pursuant to chapter 34.05 RCW, and beer and wine that is not produced by the brewery or winery shall be purchased from a licensed beer or wine distributor. Nothing in this section shall prohibit a microbrewery holding a beer and/or wine restaurant license under RCW 66.24.320 from holding the same privileges and endorsements attached to the beer and/or wine restaurant license. Nothing in this section shall prohibit a licensed craft distillery from selling spirits of its own production under RCW 66.24.145.

(c) Nothing in this section shall prohibit a licensed distiller, domestic brewery, microbrewery, domestic winery, or a lessee of a licensed domestic brewer, microbrewery, or domestic winery, from being licensed as a spirits, beer, and wine restaurant pursuant to chapter 66.24 RCW for the purpose of selling liquor at a spirits, beer, and wine restaurant premises on the property on which the primary manufacturing facility of the licensed distiller, domestic brewer, microbrewery, or domestic winery is located or on contiguous property owned or leased by the licensed distiller, domestic brewer, microbrewery, or domestic winery as prescribed by rules adopted by the board pursuant to chapter 34.05 RCW. Nothing in this section shall prohibit a microbrewery holding a spirits, beer, and wine restaurant license under RCW 66.24.420 from holding the same privileges and endorsements attached to the spirits, beer, and wine restaurant license. This section does not prohibit a brewery or microbrewery holding a spirits, beer, and wine restaurant license or a beer and/or wine license under chapter 66.24 RCW operated on the premises of the brewery or microbrewery from holding a second retail only license at a location separate from the premises of the brewery or microbrewery.

(d) Nothing in this section prohibits retail licensees with a caterer's endorsement issued under RCW 66.24.320 or 66.24.420 from operating on a domestic winery premises.

(e) Nothing in this section prohibits an organization qualifying under RCW 66.24.375 formed for the purpose of constructing and operating a facility to promote Washington wines from holding retail licenses on the facility property or leasing all or any portion of such facility property to a retail licensee on the facility property if the members of the board of directors or officers of the board for the organization include officers, directors, owners, or employees of a licensed domestic winery. Financing for the construction of the facility must include both public and private money.

(f) Nothing in this section prohibits a bona fide charitable nonprofit society or association registered under section 501(c)(3) of the internal revenue code, or a local wine industry association registered under section 501(c)(6) of the internal revenue code as it exists on July 22, 2007, and having an officer, director, owner, or employee of a licensed domestic winery or a wine certificate of approval holder on its board of directors from holding a special occasion license under RCW 66.24.380.

(g)(i) Nothing in this section prohibits domestic wineries and retailers licensed under chapter 66.24 RCW from producing, jointly or together with regional, state, or local wine industry associations, brochures and materials promoting tourism in Washington state which contain information regarding retail licensees, domestic wineries, and their products.

(ii) Nothing in this section prohibits: (A) Domestic wineries, domestic breweries, microbreweries, and certificate of approval holders licensed under this chapter from listing on their internet web sites information related to retailers who sell or promote their products, including direct links to the retailers' internet web sites; and (B) retailers licensed under this chapter from listing on their internet web sites information related to domestic wineries, domestic breweries, microbreweries, and certificate of approval holders whose products those retailers sell or promote, including direct links to the domestic wineries', domestic breweries', microbreweries', and certificate of approval holders' web sites.

(h) Nothing in this section prohibits the performance of personal services offered from time to time by a domestic winery or certificate of approval holder licensed under RCW 66.24.206(1)(a) for or on behalf of a licensed retail business when the personal services are (i) conducted at a licensed premises, and (ii) intended to inform, educate, or enhance customers' knowledge or experience of the manufacturer's products. The performance of personal services may include participation and pouring at the premises of a retailer holding a spirits, beer, and wine restaurant license, a wine and/or beer restaurant license, ((~~or~~)) a specialty wine shop license, a special occasion license, or a private club license; bottle signings; and other similar informational or educational activities. A domestic winery or certificate of approval holder is not obligated to perform any such personal services, and a retail licensee may not require a domestic winery or certificate of approval holder to conduct any personal service as a condition for selling any alcohol to the retail licensee. Except as provided in RCW 66.28.150, the cost of sampling may not be borne, directly or indirectly, by any liquor manufacturer, importer, or distributor. Nothing in this section prohibits domestic wineries and retail licensees from identifying the wineries on private labels authorized under RCW *66.24.400, 66.24.425, ((~~and~~)) 66.24.450, 66.24.360, and 66.24.371.

(i) Until July 1, 2007, nothing in this section prohibits a nonprofit statewide organization of microbreweries formed for the purpose of promoting Washington's craft beer industry as a trade association registered as a 501(c) with the internal revenue service from holding a special occasion license to conduct up to six beer festivals.

(j) Nothing in this section shall prohibit a manufacturer, importer, or distributor from entering into an arrangement with any holder of a sports/entertainment facility license or an affiliated business for brand advertising at the licensed facility or promoting events held at the sports entertainment facility as authorized under RCW 66.24.570.

(2) Financial interest, direct or indirect, as used in this section, shall include any interest, whether by stock ownership, mortgage, lien, or through interlocking directors, or otherwise. Pursuant to rules promulgated by the board in accordance with chapter 34.05 RCW manufacturers, distributors, and importers may perform, and retailers may accept the service of building, rotating and restocking case displays and stock room inventories; rotating and rearranging can and bottle displays of their own products; provide point of sale material and brand signs; price case goods of their own brands; and perform such similar normal business services as the board may by regulation prescribe.

(3)(a) This section does not prohibit a manufacturer, importer, or distributor from providing services to a special occasion licensee for: (i) Installation of draft beer dispensing equipment or advertising, (ii) advertising, pouring, or dispensing of beer or wine at a beer or wine tasting exhibition or judging event, or (iii) a special occasion licensee from receiving any such services as may be provided by a manufacturer, importer, or distributor. Nothing in this section shall prohibit a retail licensee, or any person financially interested, directly or indirectly, in such a retail licensee from having a financial interest, direct or indirect, in a business which provides, for a compensation commensurate in value to the services provided, bottling, canning or other services to a manufacturer, so long as the retail licensee or person interested therein has no direct financial interest in or control of said manufacturer.

(b) A person holding contractual rights to payment from selling a liquor distributor's business and transferring the license shall not be deemed to have a financial interest under this section if the person (i) lacks any ownership in or control of the distributor, (ii) is not employed by the distributor, and (iii) does not influence or attempt to influence liquor purchases by retail liquor licensees from the distributor.

(c) The board shall adopt such rules as are deemed necessary to carry out the purposes and provisions of subsections (1)(g) and (h) and (3)(a) of this section in accordance with the administrative procedure act, chapter 34.05 RCW.

(4) A license issued under RCW 66.24.395 does not constitute a retail license for the purposes of this section.

(5) A public house license issued under RCW 66.24.580 does not violate the provisions of this section as to a retailer having an interest directly or indirectly in a liquor-licensed manufacturer. [2009 c 373 § 5; 2008 c 94 § 5. Prior: 2007 c 370 § 2; 2007 c 369 § 1; 2007 c 222 § 3; 2007 c 217 § 1; prior: 2006 c 330 § 28; 2006 c 92 § 1; 2006 c 43 § 1; prior: 2004 c 160 § 9; 2004 c 62 § 1; 2002 c 109 § 1; 2000 c 177 § 1; prior: 1998 c 127 § 1; 1998 c 126 § 11; 1997 c 321 § 46; prior: 1996 c 224 § 3; 1996 c 106 § 1; 1994 c 63 § 1; 1992 c 78 § 1; 1985 c 363 § 1; 1982 c 85 § 7; 1977 ex.s. c 219 § 2; 1975-'76 2nd ex.s. c 74 § 3; 1975 1st ex.s. c 173 § 6; 1937 c 217 § 6; 1935 c 174 § 14; 1933 ex.s. c 62 § 90; RRS § 7306-90; prior: 1909 c 84 § 1.]

Reviser's note: *(1) RCW 66.24.400 was amended by 2008 c 41 § 10, removing reference to private label identification from the statute.

(2) RCW 66.28.010 was amended by 2009 c 373 § 5 without cognizance of its repeal by 2009 c 506 § 11. For rule of construction concerning sections amended and repealed in the same legislative session, see RCW 1.12.025.

Construction—Severability—2006 c 330: See RCW 15.89.900 and 15.89.901.

Effective date—2004 c 160: See note following RCW 66.04.010.

Effective date—1998 c 127: "This act takes effect July 1, 1998." [1998 c 127 § 2.]

Effective date—1998 c 126: See note following RCW 66.20.010.

Effective date—1997 c 321: See note following RCW 66.24.010.

Intent—1996 c 224: See note following RCW 66.24.580.

Effective date—1975-'76 2nd ex.s. c 74: See note following RCW 66.24.310.

Severability—Effective date—1975 1st ex.s. c 173: See notes following RCW 66.08.050.

Giving away of liquor prohibited—Exceptions: RCW 66.28.040.

66.28.010 Manufacturers, importers, distributors, and authorized representatives barred from interest in retail business or location—Advances prohibited—"Financial interest" defined—Exceptions. [2008 c 94 § 5. Prior: 2007 c 370 § 2; 2007 c 369 § 1; 2007 c 222 § 3; 2007 c 217 § 1; prior: 2006 c 330 § 28; 2006 c 92 § 1; 2006 c 43 § 1; prior: 2004 c 160 § 9; 2004 c 62 § 1; 2002 c 109 § 1; 2000 c 177 § 1; prior: 1998 c 127 § 1; 1998 c 126 § 11; 1997 c 321 § 46; prior: 1996 c 224 § 3; 1996 c 106 § 1; 1994 c 63 § 1; 1992 c 78 § 1; 1985 c 363 § 1; 1982 c 85 § 7; 1977 ex.s. c 219 § 2; 1975-'76 2nd ex.s. c 74 § 3; 1975 1st ex.s. c 173 § 6; 1937 c 217 § 6; 1935 c 174 § 14; 1933 ex.s. c 62 § 90; RRS § 7306-90; prior: 1909 c 84 § 1.] Repealed by 2009 c 506 § 11. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Reviser's note: RCW 66.28.010 was amended by 2009 c 373 § 5 without cognizance of its repeal by 2009 c 506 § 11. For rule of construction concerning sections amended and repealed in the same legislative session, see RCW 1.12.025.

66.28.040 Giving away of liquor prohibited—Exceptions. Except as permitted by the board under RCW 66.20.010, no domestic brewery, microbrewery, distributor, distiller, domestic winery, importer, rectifier, certificate of approval holder, or other manufacturer of liquor shall, within the state of Washington, give to any person any liquor; but nothing in this section nor in *RCW 66.28.010 shall prevent a domestic brewery, microbrewery, distributor, domestic winery, distiller, certificate of approval holder, or importer from furnishing samples of beer, wine, or spirituous liquor to authorized licensees for the purpose of negotiating a sale, in accordance with regulations adopted by the liquor control board, provided that the samples are subject to taxes imposed by RCW 66.24.290 and 66.24.210, and in the case of spirituous liquor, any product used for samples must be purchased at retail from the board; nothing in this section shall prevent the furnishing of samples of liquor to the board for the purpose of negotiating the sale of liquor to the state liquor control board; nothing in this section shall prevent a domestic brewery, microbrewery, domestic winery, distillery, certificate of approval holder, or distributor from furnishing beer, wine, or spirituous liquor for instructional purposes under RCW 66.28.150; nothing in this section shall prevent a domestic winery, certificate of approval holder, or distributor from furnishing wine without charge, subject to the taxes imposed by RCW 66.24.210, to a not-for-profit group organized and operated solely for the purpose of enology or the study of viticulture which has been in existence for at least six months and that uses wine so furnished solely for such educational purposes or a domestic winery, or an out-of-state certificate of approval holder, from furnishing wine without charge or a domestic brewery, or an out-of-state certificate of approval holder, from furnishing beer without charge, subject to the taxes imposed by RCW 66.24.210 or 66.24.290, or a domestic distiller licensed under RCW 66.24.140 or an accredited representative of a distiller, manufacturer, importer, or distributor of spirituous liquor licensed under RCW 66.24.310, from furnishing spirits without charge, to a nonprofit charitable corporation or association exempt from taxation under section 501(c)(3) or (6) of the internal revenue code of 1986 (26 U.S.C. Sec. 501(c)(3) or (6)) for use consistent with the purpose or purposes entitling it to such exemption; nothing in this section shall prevent a domestic brewery or microbrewery from serving beer without charge, on the brewery premises; nothing in this section shall prevent donations of wine for the purposes of RCW 66.12.180; nothing in this section shall prevent a domestic winery from serving wine without charge, on the winery premises; and nothing in this section shall prevent a craft distillery from serving spirits without charge, on the distillery premises subject to RCW 66.24.145. [2009 c 373 § 8. Prior: 2008 c 94 § 6; 2008 c 41 § 12; 2004 c 160 § 11; 2000 c 179 § 1; prior: 1998 c 256 § 1; 1998 c 126 § 12; 1997 c 39 § 1; 1987 c 452 § 15; 1983 c 13 § 2; 1983 c 3 § 165; 1982 1st ex.s. c 26 § 2; 1981 c 182 § 2; 1975 1st ex.s. c 173 § 10; 1969 ex.s. c 21 § 7; 1935 c 174 § 4; 1933 ex.s. c 62 § 30; RRS § 7306-30.]

***Reviser's note:** RCW 66.28.010 was amended by 2009 c 373 § 5 without cognizance of its repeal by 2009 c 506 § 11. For rule of construction concerning sections amended and repealed in the same legislative session, see RCW 1.12.025.

Effective date—2004 c 160: See note following RCW 66.04.010.

Effective date—1998 c 126: See note following RCW 66.20.010.

Construction—Effective dates—Severability—1987 c 452: See RCW 15.88.900 through 15.88.902.

Severability—Effective date—1975 1st ex.s. c 173: See notes following RCW 66.08.050.

Effective date—1969 ex.s. c 21: See note following RCW 66.04.010.

66.28.110 Wine to be labeled—Contents. (1) Every person producing, manufacturing, bottling, or distributing wine shall put upon all packages a distinctive label that will provide the consumer with adequate information as to the identity and quality of the product, the alcoholic content thereof, the net contents of the package, the name of the producer, manufacturer, or bottler thereof, and such other information as the board may by rule prescribe.

(2) Subject to subsection (3) of this section:

(a) If the appellation of origin claimed or implied anywhere on a wine label is "Washington," then at least ninety-five percent of the grapes used in the production of the wine must have been grown in Washington.

(b) If the appellation of origin claimed or implied anywhere on a wine label is "Washington" and the name of an American viticultural area located wholly within Washington, then at least ninety-five percent of the grapes used in the production of the wine must have been grown in Washington.

(c) If the appellation of origin claimed or implied anywhere on a wine label is "Washington" and the name of an American viticultural area located within both Washington and an adjoining state, then at least ninety-five percent of the grapes used in the production of the wine must have been grown within the defined boundaries of that American viticultural area or in Washington.

(3) Upon evidence of material damage, destruction, disease, or other loss to one or more vineyards in any American viticultural area, region, subregion, or other discrete area, the director of the department of agriculture must notify the board and the board may suspend the requirements of subsection (2) of this section with respect to the adversely affected area for such period of time as the board reasonably may determine.

(4) For purposes of this section, "American viticultural area" is a delimited grape growing region distinguishable by geographical features, the boundaries of which have been recognized and defined by the federal alcohol and trade tax bureau and recognized by the board.

(5) This section does not apply to wines that are produced with the addition of wine spirits, brandy, or alcohol. [2009 c 404 § 1; 1939 c 172 § 4; 1933 ex.s. c 62 § 45; RRS § 7306-45.]

Application—2009 c 404: "This act applies to wine made from grapes harvested after December 31, 2009." [2009 c 404 § 2.]

66.28.140 Removing family beer or wine from home for use at wine tastings or competitions—Conditions. (1) An adult member of a household may remove family beer or wine from the home subject to the following conditions:

(a) The quantity removed by a producer is limited to a quantity not exceeding twenty gallons;

(b) Family beer or wine is not removed for sale; and

(c) Family beer or wine is removed from the home for private use, including use at organized affairs, exhibitions, or competitions such as homemaker's contests, tastings, or judging.

(2) As used in this section, "family beer or wine" means beer or wine manufactured in the home for private consumption, and not for sale. [2009 c 360 § 2; 1994 c 201 § 6; 1981 c 255 § 2.]

66.28.180 Price list—Contents—Contracts and memoranda with distributors. (1) Beer and wine distributors.

(a) Every beer or wine distributor shall maintain at its liquor licensed location a price list showing the wholesale prices at which any and all brands of beer and wine sold by such beer and/or wine distributor shall be sold to retailers within the state.

(b) Each price list shall set forth:

(i) All brands, types, packages, and containers of beer or wine offered for sale by such beer and/or wine distributor; and

(ii) The wholesale prices thereof to retail licensees, including allowances, if any, for returned empty containers.

(c) No beer and/or wine distributor may sell or offer to sell any package or container of beer or wine to any retail licensee at a price differing from the price for such package or container as shown in the price list, according to rules adopted by the board.

(d) Quantity discounts are prohibited. No price may be below acquisition cost.

(e) Distributor prices on a "close-out" item shall be allowed if the item to be discontinued has been listed for a period of at least six months, and upon the further condition that the distributor who offers such a close-out price shall not restock the item for a period of one year following the first effective date of such close-out price.

(f) Any beer and/or wine distributor or employee authorized by the distributor-employer may sell beer and/or wine at the distributor's listed prices to any annual or special occasion retail licensee upon presentation to the distributor or employee at the time of purchase of a special permit issued by the board to such licensee.

(g) Every annual or special occasion retail licensee, upon purchasing any beer and/or wine from a distributor, shall immediately cause such beer or wine to be delivered to the licensed premises, and the licensee shall not thereafter permit such beer to be disposed of in any manner except as authorized by the license.

(h) Beer and wine sold as provided in this section shall be delivered by the distributor or an authorized employee either to the retailer's licensed premises or directly to the retailer at the distributor's licensed premises. When a domestic winery, brewery, microbrewery, or certificate of approval holder with a direct shipping endorsement is acting as a distributor of its own production, a licensed retailer may contract with a common carrier to obtain the product directly from the domestic winery, brewery, microbrewery, or certificate of approval holder with a direct shipping endorsement. A distributor's prices to retail licensees shall be the same at both such places of delivery.

(2) Beer and wine suppliers' contracts and memoranda.

(a) Every domestic brewery, microbrewery, domestic winery, certificate of approval holder, and beer and/or wine importer offering beer and/or wine for sale within the state and any beer and/or wine distributor who sells to other beer and/or wine distributors shall maintain at its liquor licensed location a price list and a copy of every written contract and a memorandum of every oral agreement which such brewery or winery may have with any beer or wine distributor, which contracts or memoranda shall contain:

(i) All advertising, sales and trade allowances, and incentive programs; and

(ii) All commissions, bonuses or gifts, and any and all other discounts or allowances.

(b) Whenever changed or modified, such revised contracts or memoranda shall also be maintained at its liquor licensed location.

(c) Each price list shall set forth all brands, types, packages, and containers of beer or wine offered for sale by such licensed brewery or winery.

(d) Prices of a domestic brewery, microbrewery, domestic winery, or certificate of approval holder shall be uniform prices to all distributors or retailers on a statewide basis less bona fide allowances for freight differentials. Quantity discounts are prohibited. No price shall be below acquisition/production cost.

(e) A domestic brewery, microbrewery, domestic winery, certificate of approval holder, beer or wine importer, or beer or wine distributor acting as a supplier to another distributor must file a distributor appointment with the board.

(f) No domestic brewery, microbrewery, domestic winery, or certificate of approval holder may sell or offer to sell any package or container of beer or wine to any distributor at a price differing from the price list for such package or container as shown in the price list of the domestic brewery, microbrewery, domestic winery, or certificate of approval holder and then in effect, according to rules adopted by the board. [2009 c 506 § 10; 2006 c 302 § 10; (2006 c 302 § 9 expired July 1, 2006); 2005 c 274 § 327. Prior: 2004 c 269 § 1; 2004 c 160 § 18; 1997 c 321 § 51; 1995 c 232 § 10; 1985 c 226 § 4.]

Effective date—2006 c 302 §§ 10 and 12: "Sections 10 and 12 of this act take effect July 1, 2006." [2006 c 302 § 15.]

Expiration date—2006 c 302 §§ 9 and 11: "Sections 9 and 11 of this act expire July 1, 2006." [2007 c 9 § 1; 2006 c 302 § 14.]

Part headings not law—Effective date—2005 c 274: See RCW 42.56.901 and 42.56.902.

Effective date—2004 c 269: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 31, 2004]." [2004 c 269 § 2.]

Effective date—2004 c 160: See note following RCW 66.04.010.

Effective date—1997 c 321: See note following RCW 66.24.010.

66.28.200 Keg registration—Special endorsement for grocery store licensee—Requirements of seller. (1) Licensees holding a beer and/or wine restaurant or a tavern license in combination with an off-premises beer and wine retailer's license, licensees holding a spirits, beer, and wine restaurant license with an endorsement issued under RCW 66.24.400(4), and licensees holding a beer and/or wine specialty shop license with an endorsement issued under RCW 66.24.371(1) may sell malt liquor in kegs or other containers capable of holding four gallons or more of liquid. Under a special endorsement from the board, a grocery store licensee may sell malt liquor in containers no larger than five and one-half gallons. The sale of any container holding four gallons or more must comply with the provisions of this section and RCW 66.28.210 through 66.28.240.

(2) Any person who sells or offers for sale the contents of kegs or other containers containing four gallons or more of malt liquor, or leases kegs or other containers that will hold four gallons of malt liquor, to consumers who are not licensed under chapter 66.24 RCW shall do the following for any transaction involving the container:

(a) Require the purchaser of the malt liquor to sign a declaration and receipt for the keg or other container or beverage in substantially the form provided in RCW 66.28.220;

(b) Require the purchaser to provide one piece of identification pursuant to RCW 66.16.040;

(c) Require the purchaser to sign a sworn statement, under penalty of perjury, that:

(i) The purchaser is of legal age to purchase, possess, or use malt liquor;

(ii) The purchaser will not allow any person under the age of twenty-one years to consume the beverage except as provided by RCW 66.44.270;

(iii) The purchaser will not remove, obliterate, or allow to be removed or obliterated, the identification required under RCW 66.28.220 to be affixed to the container;

(d) Require the purchaser to state the particular address where the malt liquor will be consumed, or the particular address where the keg or other container will be physically located; and

(e) Require the purchaser to maintain a copy of the declaration and receipt next to or adjacent to the keg or other container, in no event a distance greater than five feet, and visible without a physical barrier from the keg, during the time that the keg or other container is in the purchaser's possession or control.

(3) A violation of this section is a gross misdemeanor. [2009 c 373 § 7; 2007 c 53 § 2; 2003 c 53 § 296; 1998 c 126 § 13; 1997 c 321 § 38; 1993 c 21 § 2; 1989 c 271 § 229.]

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

Effective date—1998 c 126: See note following RCW 66.20.010.

Effective date—1997 c 321: See note following RCW 66.24.010.

Effective dates—1989 c 271: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately, except:

(1) Sections 502 and 504 of this act shall take effect June 1, 1989; and

(2) Sections 229 through 233, 501, 503, and 505 through 509 of this act shall take effect July 1, 1989." [1989 c 271 § 607.]

Severability—1989 c 271: See note following RCW 9.94A.510.

66.28.270 Cash payments—Electronic funds transfers. Nothing in this chapter prohibits the use of checks, credit or debit cards, prepaid accounts, electronic funds transfers, and other similar methods as approved by the board, as cash payments for purposes of this title. Electronic fund[s] transfers must be: (1) Voluntary; (2) conducted pursuant to a prior written agreement of the parties that includes a provision that the purchase be initiated by an irrevocable invoice or sale order before the time of delivery; (3) initiated by the retailer, manufacturer, importer, or distributor no later than the first business day following delivery; and (4) completed as promptly as is reasonably practical, and in no event, later than five business days following delivery. [2009 c 373 § 11.]

66.28.280 Three-tier system—Intent. The legislature recognizes that Washington's current three-tier system, where the functions of manufacturing, distributing, and retailing are distinct and the financial relationships and business transactions between entities in these tiers are regulated, is a valuable system for the distribution of beer and wine. The legislature further recognizes that the historical total prohibition on ownership of an interest in one tier by a person with an ownership interest in another tier, as well as the historical restriction on financial incentives and business relationships between tiers, is unduly restrictive. The legislature finds the modifications contained in chapter 506, Laws of 2009 are appropriate, because the modifications do not impermissibly interfere with the goals of orderly marketing of alcohol in the state, encouraging moderation in consumption of alcohol by the citizens of the state, protecting the public interest and advancing public safety by preventing the use and consumption of alcohol by minors and other abusive consumption, and promoting the efficient collection of taxes by the state. [2009 c 506 § 1.]

66.28.285 Three-tier system—Definitions. The definitions in this section apply throughout RCW 66.28.280 through 66.28.315 unless the context clearly requires otherwise.

(1) "Adverse impact on public health and safety" means that an existing or proposed practice or occurrence has resulted or is more likely than not to result in alcohol being made significantly more attractive or available to minors than would otherwise be the case or has resulted or is more likely than not to result in overconsumption, consumption by minors, or other harmful or abusive forms of consumption.

(2) "Affiliate" means any one of two or more persons if one of those persons has actual or legal control, directly or indirectly, whether by stock ownership or otherwise, of the other person or persons and any one of two or more persons

subject to common control, actual or legal, directly or indirectly, whether by stock ownership or otherwise.

(3) "Industry member" means a licensed manufacturer, producer, supplier, importer, wholesaler, distributor, authorized representative, certificate of approval holder, warehouse, and any affiliates, subsidiaries, officers, directors, partners, agents, employees, and representatives of any industry member. "Industry member" does not include the board or any of the board's employees.

(4) "Person" means any individual, partnership, joint stock company, business trust, association, corporation, or other form of business enterprise, including a receiver, trustee, or liquidating agent and includes any officer or employee of a retailer or industry member.

(5) "Retailer" means the holder of a license issued by the board to allow for the sale of alcoholic beverages to consumers for consumption on or off premises and any of the retailer's agents, officers, directors, shareholders, partners, or employees. "Retailer" does not include the board or any of the board's employees.

(6) "Undue influence" means one retailer or industry member directly or indirectly influencing the purchasing, marketing, or sales decisions of another retailer or industry member by any agreement written or unwritten or any other business practices or arrangements such as but not limited to the following:

(a) Any form of coercion between industry members and retailers or between retailers and industry members through acts or threats of physical or economic harm, including threat of loss of supply or threat of curtailment of purchase;

(b) A retailer on an involuntary basis purchasing less than it would have of another industry member's product;

(c) Purchases made by a retailer or industry member as a prerequisite for purchase of other items;

(d) A retailer purchasing a specific or minimum quantity or type of a product or products from an industry member;

(e) An industry member requiring a retailer to take and dispose of a certain product type or quota of the industry member's products;

(f) A retailer having a continuing obligation to purchase or otherwise promote or display an industry member's product;

(g) An industry member having a continuing obligation to sell a product to a retailer;

(h) A retailer having a commitment not to terminate its relationship with an industry member with respect to purchase of the industry member's products or an industry member having a commitment not to terminate its relationship with a retailer with respect to the sale of a particular product or products;

(i) An industry member being involved in the day-to-day operations of a retailer or a retailer being involved in the day-to-day operations of an industry member in a manner that violates the provisions of this section;

(j) Discriminatory pricing practices as prohibited by law or other practices that are discriminatory in that product is not offered to all retailers in the local market on the same terms. [2009 c 506 § 2.]

66.28.290 Three-tier system—Direct or indirect interests between industry members, affiliates, and retailers. (1) Notwithstanding any prohibitions and restrictions contained in this title, it shall be lawful for an industry member or affiliate to have a direct or indirect financial interest in another industry member or a retailer, and for a retailer or affiliate to have a direct or indirect financial interest in an industry member unless such interest has resulted or is more likely than not to result in undue influence over the retailer or the industry member or has resulted or is more likely than not to result in an adverse impact on public health and safety. The structure of any such financial interest must be consistent with subsection (2) of this section.

(2) Subject to subsection (1) of this section and except as provided in RCW 66.28.295:

(a) An industry member in whose name a license or certificate of approval has been issued pursuant to this title may wholly own or hold a financial interest in a separate legal entity licensed pursuant to RCW 66.24.320 through 66.24.570, but may not have such a license issued in its name; and

(b) A retailer in whose name a license has been issued pursuant to this title may wholly own or hold a financial interest in a separate legal entity licensed or holding a certificate of approval pursuant to RCW 66.24.170, 66.24.206, 66.24.240, 66.24.244, 66.24.270(2), 66.24.200, or 66.24.250, but may not have such a license or certificate of approval issued in its name; and

(c) A supplier in whose name a license or certificate of approval has been issued pursuant to this title may wholly own or hold a financial interest in a separate legal entity licensed as a distributor or importer under this title, but such supplier may not have a license as a distributor or importer issued in its own name; and

(d) A distributor or importer in whose name a license has been issued pursuant to this title may wholly own or hold a financial interest in a separate legal entity licensed or holding a certificate of approval as a supplier under this title, but such distributor or importer may not have a license or certificate of approval as a supplier issued in its own name. [2009 c 506 § 3.]

66.28.295 Three-tier system—Direct or indirect interests—Allowed activities. Nothing in RCW 66.28.290 shall prohibit:

(1) A licensed domestic brewery or microbrewery from being licensed as a retailer pursuant to chapter 66.24 RCW for the purpose of selling beer or wine at retail on the brewery premises and at one additional off-site retail only location.

(2) A domestic winery from being licensed as a retailer pursuant to chapter 66.24 RCW for the purpose of selling beer or wine at retail on the winery premises. Such beer and wine so sold at retail shall be subject to the taxes imposed by RCW 66.24.290 and 66.24.210 and to reporting and bonding requirements as prescribed by regulations adopted by the board pursuant to chapter 34.05 RCW, and beer and wine that is not produced by the brewery or winery shall be purchased from a licensed beer or wine distributor.

(3) A microbrewery holding a beer and/or wine restaurant license under RCW 66.24.320 from holding the same

privileges and endorsements attached to the beer and/or wine restaurant license.

(4) A licensed craft distillery from selling spirits of its own production under RCW 66.24.145.

(5) A licensed distiller, domestic brewery, microbrewery, domestic winery, or a lessee of a licensed domestic brewer, microbrewery, or domestic winery, from being licensed as a spirits, beer, and wine restaurant pursuant to chapter 66.24 RCW for the purpose of selling liquor at a spirits, beer, and wine restaurant premises on the property on which the primary manufacturing facility of the licensed distiller, domestic brewer, microbrewery, or domestic winery is located or on contiguous property owned or leased by the licensed distiller, domestic brewer, microbrewery, or domestic winery as prescribed by rules adopted by the board pursuant to chapter 34.05 RCW.

(6) A microbrewery holding a spirits, beer, and wine restaurant license under RCW 66.24.420 from holding the same privileges and endorsements attached to the spirits, beer, and wine restaurant license.

(7) A brewery or microbrewery holding a spirits, beer, and wine restaurant license or a beer and/or wine license under chapter 66.24 RCW operated on the premises of the brewery or microbrewery from holding a second retail only license at a location separate from the premises of the brewery or microbrewery.

(8) Retail licensees with a caterer's endorsement issued under RCW 66.24.320 or 66.24.420 from operating on a domestic winery premises.

(9) An organization qualifying under RCW 66.24.375 formed for the purpose of constructing and operating a facility to promote Washington wines from holding retail licenses on the facility property or leasing all or any portion of such facility property to a retail licensee on the facility property if the members of the board of directors or officers of the board for the organization include officers, directors, owners, or employees of a licensed domestic winery. Financing for the construction of the facility must include both public and private money.

(10) A bona fide charitable nonprofit society or association registered under Title 26 U.S.C. Sec. 501(c)(3) of the federal internal revenue code, or a local wine industry association registered under Title 26 U.S.C. Sec. 501(c)(6) of the federal internal revenue code as it existed on July 22, 2007, and having an officer, director, owner, or employee of a licensed domestic winery or a wine certificate of approval holder on its board of directors from holding a special occasion license under RCW 66.24.380.

(11) A person licensed pursuant to RCW 66.24.170, 66.24.240, or 66.24.244 from exercising the privileges of distributing and selling at retail such person's own production or from exercising any other right or privilege that attaches to such license.

(12) A person holding a certificate of approval pursuant to RCW 66.24.206 from obtaining an endorsement to act as a distributor of their own product or from shipping their own product directly to consumers as authorized by RCW 66.20.360.

(13) A person holding a wine shipper's permit pursuant to RCW 66.20.375 from shipping their own product directly to consumers.

(14) A person holding a certificate of approval pursuant to RCW 66.24.270(2) from obtaining an endorsement to act as a distributor of their own product. [2009 c 506 § 4.]

66.28.300 Three-tier system—Undue influence—Determination by board. Any industry member or retailer or any other person seeking a determination by the board as to whether a proposed or existing financial interest has resulted or is more likely than not to result in undue influence or has resulted or is more likely than not to result in an adverse impact on public health and safety may file a complaint or request for determination with the board. Upon receipt of a request or complaint the board may conduct such investigation as it deems appropriate in the circumstances. If the investigation reveals the financial interest has resulted or is more likely than not to result in undue influence or has resulted or is more likely than not to result in an adverse impact on public health and safety the board may issue an administrative violation notice or a notice of intent to deny the license to the industry member, to the retailer, or both. If the financial interest was acquired through a transaction that has already been consummated when the board issues its administrative violation notice, the board shall have the authority to require that the transaction be rescinded or otherwise undone. The recipient of the administrative notice of violation or notice of intent to deny the license may request a hearing under chapter 34.05 RCW. [2009 c 506 § 5.]

66.28.305 Three-tier system—Money advances—Prohibition. Except as provided in RCW 66.28.310, no industry member shall advance and no retailer shall receive moneys or moneys' worth under an agreement written or unwritten or by means of any other business practice or arrangement. [2009 c 506 § 6.]

66.28.310 Three-tier system—Promotional items. (1)(a) Nothing in RCW 66.28.305 prohibits an industry member from providing retailers branded promotional items which are of nominal value, singly or in the aggregate. Such items include but are not limited to: Trays, lighters, blotters, postcards, pencils, coasters, menu cards, meal checks, napkins, clocks, mugs, glasses, bottles or can openers, corkscrews, matches, printed recipes, shirts, hats, visors, and other similar items. Branded promotional items:

(i) Must be used exclusively by the retailer or its employees in a manner consistent with its license;

(ii) Must bear imprinted advertising matter of the industry member only;

(iii) May be provided by industry members only to retailers and their employees and may not be provided by or through retailers or their employees to retail customers; and

(iv) May not be targeted to or appeal principally to youth.

(b) An industry member is not obligated to provide any such branded promotional items, and a retailer may not require an industry member to provide such branded promotional items as a condition for selling any alcohol to the retailer.

(c) Any industry member or retailer or any other person asserting that the provision of branded promotional items as

allowed in (a) of this subsection has resulted or is more likely than not to result in undue influence or an adverse impact on public health and safety, or is otherwise inconsistent with the criteria in (a) of this subsection may file a complaint with the board. Upon receipt of a complaint the board may conduct such investigation as it deems appropriate in the circumstances. If the investigation reveals the provision of branded promotional items has resulted in or is more likely than not to result in undue influence or has resulted or is more likely than not to result in an adverse impact on public health and safety or is otherwise inconsistent with (a) of this subsection the board may issue an administrative violation notice to the industry member, to the retailer, or both. The recipient of the administrative violation notice may request a hearing under chapter 34.05 RCW.

(2) Nothing in RCW 66.28.305 prohibits an industry member from providing to a special occasion licensee and a special occasion licensee from receiving services for:

(a) Installation of draft beer dispensing equipment or advertising; or

(b) Advertising, pouring, or dispensing of beer or wine at a beer or wine tasting exhibition or judging event.

(3) Nothing in RCW 66.28.305 prohibits industry members from performing, and retailers from accepting the service of building, rotating, and restocking displays and stockroom inventories; rotating and rearranging can and bottle displays of their own products; providing point of sale material and brand signs; pricing case goods of their own brands; and performing such similar business services consistent with board rules, or personal services as described in subsection (5) of this section.

(4) Nothing in RCW 66.28.305 prohibits:

(a) Industry members from listing on their internet web sites information related to retailers who sell or promote their products, including direct links to the retailers' internet web sites; and

(b) Retailers from listing on their internet web sites information related to industry members whose products those retailers sell or promote, including direct links to the industry members' web sites; or

(c) Industry members and retailers from producing, jointly or together with regional, state, or local industry associations, brochures and materials promoting tourism in Washington state which contain information regarding retail licensees, industry members, and their products.

(5) Nothing in RCW 66.28.305 prohibits the performance of personal services offered from time to time by a domestic winery or certificate of approval holder to retailers when the personal services are (a) conducted at a licensed premises, and (b) intended to inform, educate, or enhance customers' knowledge or experience of the manufacturer's products. The performance of personal services may include participation and pouring, bottle signing events, and other similar informational or educational activities at the premises of a retailer holding a spirits, beer, and wine restaurant license, a wine and/or beer restaurant license, a specialty wine shop license, a special occasion license, or a private club license. A domestic winery or certificate of approval holder is not obligated to perform any such personal services, and a retail licensee may not require a domestic winery or certificate of approval holder to conduct any personal service as a condition for selling any alcohol to the retail licensee. Except as provided in RCW 66.28.150, the cost of sampling may not be borne, directly or indirectly, by any domestic winery or certificate of approval holder or any distributor. Nothing in this section prohibits wineries, certificate of approval holders, and retail licensees from identifying the producers on private labels authorized under RCW 66.24.400, 66.24.425, and 66.24.450.

(6) Nothing in RCW 66.28.305 prohibits an industry member from entering into an arrangement with any holder of a sports entertainment facility license or an affiliated business for brand advertising at the licensed facility or promoting events held at the sports entertainment facility as authorized under RCW 66.24.570. [2009 c 506 § 7.]

66.28.315 Three-tier system—Recordkeeping. All industry members and retailers shall keep and maintain the following records on their premises for a three-year period:

(1) Records of all items, services, and moneys' worth furnished to and received by a retailer and of all items, services, and moneys' worth provided to a retailer and purchased by a retailer at fair market value; and

(2) Records of all industry member financial ownership or interests in a retailer and of all retailer financial ownership interests in an industry member. [2009 c 506 § 8.]

66.28.320 Three-tier system—Rule adoption. The board shall adopt rules as are deemed necessary to carry out the purposes and provisions of this chapter in accordance with the administrative procedure act, chapter 34.05 RCW. [2009 c 506 § 9.]

Chapter 66.40 RCW
LOCAL OPTION

Sections

66.40.030 License elections.
66.40.130 Effect of election as to licenses.

66.40.030 License elections. Within any unit referred to in RCW 66.40.010, there may be held a separate election upon the question of whether the sale of liquor under spirits, beer, and wine restaurant; spirits, beer, and wine private club; spirits, beer, and wine nightclub; and sports entertainment facility licenses, shall be permitted within such unit. The conditions and procedure for holding such election shall be those prescribed by RCW 66.40.020, 66.40.040, 66.40.100, 66.40.110 and 66.40.120. Whenever a majority of qualified voters voting upon said question in any such unit shall have voted "against the sale of liquor under spirits, beer, and wine restaurant; spirits, beer, and wine private club; spirits, beer, and wine nightclub; and sports entertainment facility licenses", the county auditor shall file with the liquor control board a certificate showing the result of the canvass at such election; and after ninety days from and after the date of the canvass, it shall not be lawful for licensees to maintain and operate premises within the election unit licensed under spirits, beer, and wine restaurant; spirits, beer, and wine private club; spirits, beer, and wine nightclub; and sports entertainment facility licenses. The addition after an election under

this section of new territory to a city, town, or county, by annexation, disincorporation, or otherwise, shall not extend the prohibition against the sale of liquor under spirits, beer, and wine restaurant; spirits, beer, and wine private club; spirits, beer, and wine nightclub; and sports entertainment facility licenses to the new territory. Elections held under RCW 66.40.010, 66.40.020, 66.40.040, 66.40.100, 66.40.110, 66.40.120 and 66.40.140, shall be limited to the question of whether the sale of liquor by means other than under spirits, beer, and wine restaurant; spirits, beer, and wine private club; spirits, beer, and wine nightclub; and sports entertainment facility licenses shall be permitted within such election unit. [2009 c 271 § 9; 1999 c 281 § 8; 1994 c 55 § 1; 1949 c 5 § 12 (adding new section 83-A to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-83A.]

Severability—1949 c 5: See RCW 66.98.080.

66.40.130 Effect of election as to licenses. Ninety days after December 2, 1948, spirits, beer, and wine restaurant; spirits, beer, and wine private club; spirits, beer, and wine nightclub; and sports entertainment facility licenses may be issued in any election unit in which the sale of liquor is then lawful. No spirits, beer, and wine restaurant; spirits, beer, and wine private club; spirits, beer, and wine nightclub; and sports entertainment facility license shall be issued in any election unit in which the sale of liquor is forbidden as the result of an election held under RCW 66.40.010, 66.40.020, 66.40.040, 66.40.100, 66.40.110, 66.40.120 and 66.40.140, unless a majority of the qualified electors in such election unit voting upon this initiative at the general election in November, 1948, vote in favor of this initiative, or unless at a subsequent general election in which the question of whether the sale of liquor under spirits, beer, and wine restaurant; spirits, beer, and wine private club; spirits, beer, and wine nightclub; and sports entertainment facility licenses shall be permitted within such unit is submitted to the electorate, as provided in RCW 66.40.030, a majority of the qualified electors voting upon such question vote "for the sale of liquor under spirits, beer, and wine restaurant; spirits, beer, and wine private club; spirits, beer, and wine nightclub; and sports entertainment facility licenses." [2009 c 271 § 10; 1999 c 281 § 9; 1949 c 5 § 13 (adding new section 87-A to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-87A.]

Severability—1949 c 5: See RCW 66.98.080.

Title 67

SPORTS AND RECREATION—CONVENTION FACILITIES

Chapters

67.08 Boxing, martial arts, and wrestling.
67.16 Horse racing.
67.70 State lottery.

Chapter 67.08 RCW
BOXING, MARTIAL ARTS, AND WRESTLING

Sections

67.08.050 Statement and report of event—Event fee—Complimentary tickets.
67.08.055 Simultaneous or closed circuit telecasts—Report—Event fee.
67.08.105 License, renewal, and event fees.

67.08.050 Statement and report of event—Event fee—Complimentary tickets. (1) Any promoter shall within seven days prior to the holding of any event file with the department a statement setting forth the name of each licensee who is a potential participant, his or her manager or managers, and such other information as the department may require. Participant changes regarding a wrestling event may be allowed after notice to the department, if the new participant holds a valid license under this chapter. The department may stop any wrestling event in which a participant is not licensed under this chapter.

(2) Upon the termination of any event the promoter shall file with the designated department representative a written report, duly verified as the department may require showing the number of tickets sold for the event, the price charged for the tickets and the gross proceeds thereof, and such other and further information as the department may require. The promoter shall pay to the department at the time of filing the report under this section an event fee to be determined by the director pursuant to RCW 67.08.105. However, the event fee may not be less than twenty-five dollars. The event fee and license fees collected under this chapter shall be paid by the department into the business and professions account under RCW 43.24.150. [2009 c 429 § 1; 2000 c 151 § 1; 1999 c 282 § 4; 1997 c 205 § 6; 1993 c 278 § 15; 1989 c 127 § 7; 1933 c 184 § 11; RRS § 8276-11. FORMER PART OF SECTION: 1939 c 54 § 1; RRS § 8276-11a, now footnoted below.]

Emergency—Effective date—1939 c 54: "That this act is necessary for the immediate support of the state government and its existing public institutions and shall take effect April 1, 1939." [1939 c 54 § 6; no RRS.]

67.08.055 Simultaneous or closed circuit telecasts—Report—Event fee. Every licensee who charges and receives an admission fee for exhibiting a simultaneous telecast of any live, current, or spontaneous boxing or sparring match, or wrestling exhibition or show on a closed circuit telecast viewed within this state shall, within seventy-two hours after such event, furnish to the department a verified written report on a form which is supplied by the department showing the number of tickets issued or sold, and the gross receipts therefor without any deductions whatsoever. Such licensee shall also, at the same time, pay to the department an event fee to be determined by the director pursuant to RCW 67.08.105. In no event, however, shall the event fee be less than twenty-five dollars. The event fee shall be immediately paid by the department into the business and professions account under RCW 43.24.150. [2009 c 429 § 2; 1993 c 278 § 16; 1989 c 127 § 15; 1975-'76 2nd ex.s. c 48 § 5.]

67.08.105 License, renewal, and event fees. The department shall set license, renewal, and event fees by rule in amounts that, pursuant to the fee policy established in RCW 43.24.086, when combined with all license and fee rev-

enue under this chapter, are sufficient to defray the costs of the department in administering this chapter. [2009 c 429 § 3; 1999 c 282 § 1.]

Chapter 67.16 RCW
HORSE RACING

Sections

67.16.102 Withholding of additional one percent of gross receipts—Payment to owners—Interest payment on one percent and amount retained by commission—Reimbursement for new racetracks.
67.16.175 Exotic wagers—Retention of percentage by race meets.
67.16.275 Washington horse racing commission Washington bred owners' bonus fund and breeder awards account.

67.16.102 Withholding of additional one percent of gross receipts—Payment to owners—Interest payment on one percent and amount retained by commission—Reimbursement for new racetracks. (1) Notwithstanding any other provision of chapter 67.16 RCW to the contrary, the licensee shall withhold and shall pay daily to the commission, in addition to the percentages authorized by RCW 67.16.105, one percent of the gross receipts of all parimutuel machines at each race meet which sums shall, at the end of each meet, be paid by the commission to the licensed owners of those Washington bred only horses finishing first, second, third, and fourth at each meet from which the additional one percent is derived in accordance with an equitable distribution formula to be promulgated by the commission prior to the commencement of each race meet: PROVIDED, That nothing in this section shall apply to race meets which are nonprofit in nature, are of ten days or less, and have an average daily handle of less than one hundred twenty thousand dollars.

(2) The additional one percent specified in subsection (1) of this section shall be deposited by the commission in the Washington horse racing commission Washington bred owners' bonus fund and breeder awards account created in RCW 67.16.275. The interest derived from this account shall be distributed annually on an equal basis to those race courses at which independent race meets are held which are nonprofit in nature and are of ten days or less. Prior to receiving a payment under this subsection, any new race course shall meet the qualifications set forth in this section for a period of two years. All funds distributed under this subsection shall be used for the purpose of maintaining and upgrading the respective racing courses and equine quartering areas of said nonprofit meets.

(3) The commission shall not permit the licensees to take into consideration the benefits derived from this section in establishing purses.

(4) The commission is authorized to pay at the end of the calendar year one-half of the one percent collected from a new licensee under subsection (1) of this section for reimbursement of capital construction of that new licensee's new race track for a period of fifteen years. This reimbursement does not include interest earned on that one-half of one percent and such interest shall continue to be collected and disbursed as provided in RCW 67.16.101 and subsection (1) of this section. [2009 c 87 § 1; 2004 c 246 § 6; 2001 c 53 § 1; 1991 c 270 § 5; 1982 c 132 § 5; 1979 c 31 § 3; 1977 ex.s. c 372 § 2; 1969 ex.s. c 233 § 3.]

Effective date—2004 c 246: See note following RCW 67.16.270.

Severability—1982 c 132: See note following RCW 67.16.010.

Severability—1977 ex.s. c 372: See note following RCW 67.16.101.

67.16.175 Exotic wagers—Retention of percentage by race meets. (1) In addition to the amounts authorized to be retained in RCW 67.16.170, race meets may retain daily for each authorized day of racing an additional six percent of the daily gross receipts of all parimutuel machines from exotic wagers at each race meet.

(2) Except as provided in subsection (3) of this section, of the amounts retained in subsection (1) of this section, one-sixth shall be paid to the commission at the end of the race meet for deposit in the Washington horse racing commission Washington bred owners' bonus fund and breeder awards account created in RCW 67.16.275. Such amounts shall be used by the commission for Washington bred breeder awards, in accordance with the rules and qualifications adopted by the commission.

(3) Of the amounts retained for breeder awards under subsection (2) of this section, twenty-five percent shall be retained by a new licensee for reimbursement of capital construction of the new licensee's new race track for a period of fifteen years.

(4) As used in this section, "exotic wagers" means any multiple wager. Exotic wagers are subject to approval of the commission. [2009 c 87 § 2; 2001 c 53 § 2; 1991 c 270 § 9. Prior: 1987 c 453 § 1; 1987 c 347 § 3; 1986 c 43 § 1; 1985 c 146 § 10; 1981 c 135 § 1.]

Severability—1985 c 146: See note following RCW 67.16.010.

Severability—1981 c 135: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 135 § 2.]

67.16.275 Washington horse racing commission Washington bred owners' bonus fund and breeder awards account. The Washington horse racing commission Washington bred owners' bonus fund and breeder awards account is created in the custody of the state treasurer. All receipts collected by the commission under RCW 67.16.102(1) and 67.16.175(2) must be deposited into the account. Expenditures from the account may be used only as authorized in RCW 67.16.102 and 67.16.175. Only the secretary of the commission or the secretary's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. [2009 c 87 § 3; 2004 c 246 § 2.]

Effective date—2004 c 246: See note following RCW 67.16.270.

Chapter 67.70 RCW
STATE LOTTERY

Sections

67.70.044 Shared game lottery.
67.70.190 Unclaimed prizes.
67.70.240 Use of moneys in state lottery account limited *(as amended by 2009 c 479)*.

67.70.240 Use of moneys in state lottery account limited *(as amended by 2009 c 500)*.
67.70.340 Transfer of shared game lottery proceeds.
67.70.906 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. *(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*

67.70.044 Shared game lottery. (1) Pursuant to RCW 67.70.040(1)(a), the commission may enter into the multistate agreement establishing a shared game lottery known as "The Big Game," that was entered into by party state lotteries in August 1996 and subsequently amended and a shared game lottery known as "Powerball."

(2) The shared game lottery account is created as a separate account outside the state treasury. The account is managed, maintained, and controlled by the commission and consists of all revenues received from the sale of shared game lottery tickets or shares, and all other moneys credited or transferred to it from any other fund or source under law. The account is allotted according to chapter 43.88 RCW. [2009 c 576 § 1; 2002 c 349 § 2.]

67.70.190 Unclaimed prizes. Unclaimed prizes shall be retained in the state lottery account for the person entitled thereto for one hundred eighty days after the drawing in which the prize is won, or after the official end of the game for instant prizes. If no claim is made for the prize within this time, all rights to the prize shall be extinguished, and the prize shall be retained in the state lottery fund for further use as prizes, except that one-third of all unclaimed prize money shall be deposited in the economic development strategic reserve account created in RCW 43.330.250.

On July 1, 2009, June 30, 2010, and June 30, 2011, all unclaimed prize money retained in the state lottery fund [account] in excess of three million dollars, excluding amounts distributed to the economic development strategic reserve account, shall be transferred into the state general fund. [2009 c 564 § 949; 2005 c 427 § 2; 1994 c 218 § 5; 1988 c 289 § 802; 1987 c 511 § 8; 1982 2nd ex.s. c 7 § 19.]

Effective date—2009 c 564: See note following RCW 2.68.020.

Effective date—1994 c 218: See note following RCW 9.46.010.

Severability—1988 c 289: See note following RCW 50.16.070.

67.70.240 Use of moneys in state lottery account limited *(as amended by 2009 c 479)*. The moneys in the state lottery account shall be used only:

(1) For the payment of prizes to the holders of winning lottery tickets or shares;

(2) For purposes of making deposits into the reserve account created by RCW 67.70.250 and into the lottery administrative account created by RCW 67.70.260;

(3) For purposes of making deposits into the education construction fund ((~~and student achievement fund~~)) created in RCW 43.135.045. ((~~For the transition period from July 1, 2001, until and including June 30, 2002, fifty percent of the moneys not otherwise obligated under this section shall be placed in the student achievement fund and fifty percent of these moneys shall be placed in the education construction fund. On and after July 1, 2002, until June 30, 2004, seventy-five percent of these moneys shall be placed in the student achievement fund and twenty-five percent shall be placed in the education construction fund.~~)) On and after July 1, 2004, all deposits not otherwise obligated under this section shall be placed in the education construction fund. Moneys in the state lottery account deposited in the education construction fund ((~~and the student achievement fund~~)) are included in "general state revenues" under RCW 39.42.070;

(4) For distribution to a county for the purpose of paying the principal and interest payments on bonds issued by the county to construct a baseball stadium, as defined in RCW 82.14.0485, including reasonably necessary preconstruction costs. Three million dollars shall be distributed under this subsection during calendar year 1996. During subsequent years, such distributions shall equal the prior year's distributions increased by four percent. Distributions under this subsection shall cease when the bonds issued for the construction of the baseball stadium are retired, but not more than twenty years after the tax under RCW 82.14.0485 is first imposed;

(5) For distribution to the stadium and exhibition center account, created in RCW 43.99N.060. Subject to the conditions of RCW 43.99N.070, six million dollars shall be distributed under this subsection during the calendar year 1998. During subsequent years, such distribution shall equal the prior year's distributions increased by four percent. No distribution may be made under this subsection after December 31, 1999, unless the conditions for issuance of the bonds under RCW 43.99N.020(2) are met. Distributions under this subsection shall cease when the bonds are retired, but not later than December 31, 2020;

(6) For the purchase and promotion of lottery games and game-related services; and

(7) For the payment of agent compensation.

The office of financial management shall require the allotment of all expenses paid from the account and shall report to the ways and means committees of the senate and house of representatives any changes in the allotments. [2009 c 479 § 44; 2001 c 3 § 4 (Initiative Measure No. 728, approved November 7, 2000); 1997 c 220 § 206 (Referendum Bill No. 48, approved June 17, 1997); 1995 3rd sp.s. c 1 § 105; 1987 c 513 § 7; 1985 c 375 § 5; 1982 2nd ex.s. c 7 § 24.]

Effective date—2009 c 479: See note following RCW 2.56.030.

67.70.240 Use of moneys in state lottery account limited *(as amended by 2009 c 500)*. The moneys in the state lottery account shall be used only:

(1) For the payment of prizes to the holders of winning lottery tickets or shares;

(2) For purposes of making deposits into the reserve account created by RCW 67.70.250 and into the lottery administrative account created by RCW 67.70.260;

(3) For purposes of making deposits into the education construction fund and student achievement fund created in RCW 43.135.045. For the transition period from July 1, 2001, until and including June 30, 2002, fifty percent of the moneys not otherwise obligated under this section shall be placed in the student achievement fund and fifty percent of these moneys shall be placed in the education construction fund. On and after July 1, 2002, until June 30, 2004, seventy-five percent of these moneys shall be placed in the student achievement fund and twenty-five percent shall be placed in the education construction fund. On and after July 1, 2004, all deposits not otherwise obligated under this section shall be placed in the education construction fund((~~. Moneys in the state lottery account deposited in the education construction fund and the student achievement fund are included in "general state revenues" under RCW 39.42.070~~));

(4) For distribution to a county for the purpose of paying the principal and interest payments on bonds issued by the county to construct a baseball stadium, as defined in RCW 82.14.0485, including reasonably necessary preconstruction costs. Three million dollars shall be distributed under this subsection during calendar year 1996. During subsequent years, such distributions shall equal the prior year's distributions increased by four percent. Distributions under this subsection shall cease when the bonds issued for the construction of the baseball stadium are retired, but not more than twenty years after the tax under RCW 82.14.0485 is first imposed;

(5) For distribution to the stadium and exhibition center account, created in RCW 43.99N.060. Subject to the conditions of RCW 43.99N.070, six million dollars shall be distributed under this subsection during the calendar year 1998. During subsequent years, such distribution shall equal the prior year's distributions increased by four percent. No distribution may be made under this subsection after December 31, 1999, unless the conditions for issuance of the bonds under RCW 43.99N.020(2) are met. Distributions under this subsection shall cease when the bonds are retired, but not later than December 31, 2020;

(6) For the purchase and promotion of lottery games and game-related services; and

(7) For the payment of agent compensation.

The office of financial management shall require the allotment of all expenses paid from the account and shall report to the ways and means committees of the senate and house of representatives any changes in the allot-

ments. [2009 c 500 § 11; 2001 c 3 § 4 (Initiative Measure No. 728, approved November 7, 2000); 1997 c 220 § 206 (Referendum Bill No. 48, approved June 17, 1997); 1995 3rd sp.s. c 1 § 105; 1987 c 513 § 7; 1985 c 375 § 5; 1982 2nd ex.s. c 7 § 24.]

Reviser's note: RCW 67.70.240 was amended twice during the 2009 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

Effective date—2009 c 500: See note following RCW 39.42.070.

Short title—Purpose—Intent—Construction—Severability—Effective dates—2001 c 3 (Initiative Measure No. 728): See notes following RCW 28A.505.210.

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

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

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

Effective date—Severability—1987 c 513: See notes following RCW 18.85.285.

State contribution for baseball stadium limited: RCW 82.14.0486.

67.70.340 Transfer of shared game lottery proceeds. (1) The legislature recognizes that creating a shared game lottery could result in less revenue being raised by the existing state lottery ticket sales. The legislature further recognizes that the fund most impacted by this potential event is the education construction account. Therefore, it is the intent of the legislature to use some of the proceeds from the shared game lottery to make up the difference that the potential state lottery revenue loss would have on the education construction account. The legislature further intends to use some of the proceeds from the shared game lottery to fund programs and services related to problem and pathological gambling.

(2) The education construction account is expected to receive one hundred two million dollars annually from state lottery games other than the shared game lottery. For fiscal year 2003 and thereafter, if the amount of lottery revenues earmarked for the education construction account is less than one hundred two million dollars, the commission, after making the transfer required under subsection (3) of this section, must transfer sufficient moneys from revenues derived from the shared game lottery into the education construction account to bring the total revenue up to one hundred two million dollars.

(3)(a) The commission shall transfer, from revenue derived from the shared game lottery, to the problem gambling account created in RCW 43.20A.892, an amount equal to the percentage specified in (b) of this subsection of net receipts. For purposes of this subsection, "net receipts" means the difference between (i) revenue received from the sale of lottery tickets or shares and revenue received from the sale of shared game lottery tickets or shares; and (ii) the sum of payments made to winners.

(b) In fiscal year 2006, the percentage to be transferred to the problem gambling account is one-tenth of one percent. In fiscal year 2007 and subsequent fiscal years, the percentage to be transferred to the problem gambling account is thirteen one-hundredths of one percent.

(4) The commission shall transfer the remaining net revenues, if any, derived from the shared game lottery "Powerball" authorized in RCW 67.70.044(1) after the transfers pursuant to this section into the state general fund for the student achievement program under RCW 28A.505.220.

(5) The remaining net revenues, if any, in the shared game lottery account after the transfers pursuant to this section shall be deposited into the general fund. [2009 c 576 § 2; 2009 c 479 § 45; 2005 c 369 § 4; 2002 c 349 § 3.]

Reviser's note: This section was amended by 2009 c 479 § 45 and by 2009 c 576 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2009 c 479: See note following RCW 2.56.030.

Findings—Intent—Severability—Effective date—2005 c 369: See notes following RCW 43.20A.890.

67.70.906 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. ***(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 147.]

Title 68

CEMETERIES, MORGUES, AND HUMAN REMAINS

Chapters

68.04 Definitions.
68.05 Funeral and cemetery board.
68.24 Cemetery property.
68.40 Endowment and nonendowment care.
68.44 Endowment care fund.
68.46 Prearrangement contracts.
68.50 Human remains.
68.60 Abandoned and historic cemeteries and historic graves.

Chapter 68.04 RCW
DEFINITIONS

Sections

68.04.190 "Cemetery authority."
68.04.900 Construction—Title applicable to state registered domestic partnerships—2009 c 521. *(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*

68.04.190 "Cemetery authority." "Cemetery authority" means an entity that has obtained a certificate of author-

ity to operate a cemetery from the funeral and cemetery board, or any other entity that operates a cemetery that is not under the jurisdiction of the funeral and cemetery board. [2009 c 102 § 6; 2005 c 365 § 39; 1943 c 247 § 19; Rem. Supp. 1943 § 3778-19.]

Funeral directors and embalmers account and cemetery account abolished, moneys transferred to funeral and cemetery account—2009 c 102: See note following RCW 18.39.810.

68.04.900 Construction—Title applicable to state registered domestic partnerships—2009 c 521. ***(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*** For the purposes of this title, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 148.]

Chapter 68.05 RCW
FUNERAL AND CEMETERY BOARD

Sections

68.05.020 "Board" defined.
68.05.040 through 68.05.080 Repealed.
68.05.095 Program administrator or manager.
68.05.100 Rules.
68.05.105 Authority of the board.
68.05.175 Permit or endorsement required for cremation.
68.05.205 Fees.
68.05.285 Repealed.

68.05.020 "Board" defined. The term "board" used in this chapter means the funeral and cemetery board. [2009 c 102 § 7; 1953 c 290 § 27.]

Funeral directors and embalmers account and cemetery account abolished, moneys transferred to funeral and cemetery account—2009 c 102: See note following RCW 18.39.810.

68.05.040 through 68.05.080 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

68.05.095 Program administrator or manager. The director, in consultation with the board, may employ and prescribe the duties of the program administrator or manager. The program administrator or manager must have a minimum of five years' experience in either cemetery or funeral management, or both, unless this requirement is waived by the board. [2009 c 102 § 8; 1987 c 331 § 8; 1953 c 290 § 34. Formerly RCW 68.05.070.]

Funeral directors and embalmers account and cemetery account abolished, moneys transferred to funeral and cemetery account—2009 c 102: See note following RCW 18.39.810.

68.05.100 Rules. The board may establish necessary rules for the enforcement of this title and the laws subject to its jurisdiction. The board shall prescribe the application forms and reports provided for in this title. [2009 c 102 § 9; 2005 c 365 § 52; 1993 c 43 § 3; 1987 c 331 § 9; 1985 c 402 § 8; 1953 c 290 § 36.]

Funeral directors and embalmers account and cemetery account abolished, moneys transferred to funeral and cemetery account—2009 c 102: See note following RCW 18.39.810.

Effective date of 1993 c 43—1993 sp.s. c 24: See note following RCW 18.39.290.

Legislative finding—1985 c 402: See note following RCW 68.50.185.

68.05.105 Authority of the board. In addition to the authority in RCW 18.235.030, the board has the following authority under this chapter:

(1) To adopt, amend, and rescind rules necessary to carry out this title; and

(2) To adopt standards of professional conduct or practice. [2009 c 102 § 10; 2005 c 365 § 53; 2002 c 86 § 316; 1987 c 331 § 10.]

Funeral directors and embalmers account and cemetery account abolished, moneys transferred to funeral and cemetery account—2009 c 102: See note following RCW 18.39.810.

Effective dates—2002 c 86: See note following RCW 18.08.340.

Part headings not law—Severability—2002 c 86: See RCW 18.235.902 and 18.235.903.

68.05.175 Permit or endorsement required for cremation. A permit or endorsement issued by the board or under chapter 18.39 RCW is required in order to operate a crematory or conduct a cremation. [2009 c 102 § 11; 1987 c 331 § 13; 1985 c 402 § 4. Formerly RCW 68.05.257.]

Funeral directors and embalmers account and cemetery account abolished, moneys transferred to funeral and cemetery account—2009 c 102: See note following RCW 18.39.810.

Legislative finding—1985 c 402: See note following RCW 68.50.185.

68.05.205 Fees. The director with the consent of the board shall set all fees for chapters 68.05, 68.20, 68.24, 68.28, 68.32, 68.36, 68.40, 68.44, and 68.46 RCW in accordance with RCW 43.24.086, including fees for licenses, certificates, regulatory charges, permits, or endorsements, and the department shall collect the fees. [2009 c 102 § 12; 1993 c 43 § 4; 1987 c 331 § 16; 1983 1st ex.s. c 5 § 1; 1977 ex.s. c 351 § 4; 1969 ex.s. c 99 § 4; 1953 c 290 § 51. Formerly RCW 68.05.230.]

Funeral directors and embalmers account and cemetery account abolished, moneys transferred to funeral and cemetery account—2009 c 102: See note following RCW 18.39.810.

Effective date of 1993 c 43—1993 sp.s. c 24: See note following RCW 18.39.290.

Severability—1983 1st ex.s. c 5: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 1st ex.s. c 5 § 3.]

Severability—1977 ex.s. c 351: See note following RCW 68.05.040.

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

Chapter 68.24 RCW
CEMETERY PROPERTY

Sections

68.24.090 Removal of dedication—Procedure.

68.24.090 Removal of dedication—Procedure. Property dedicated to cemetery purposes shall be held and used exclusively for cemetery purposes, unless and until the dedication is removed from all or any part of it by an order and decree of the superior court of the county in which the property is situated, in a proceeding brought by the cemetery authority for that purpose and upon notice of hearing and proof satisfactory to the court:

(1) That no placements of human remains were made in or that all placements of human remains have been removed from that portion of the property from which dedication is sought to be removed.

(2) That the portion of the property from which dedication is sought to be removed is not being used for placement of human remains.

(3) That notice of the proposed removal of dedication has been given in writing to both the funeral and cemetery board and the department of archaeology and historic preservation. This notice must be given at least sixty days before filing the proceedings in superior court. The notice of the proposed removal of dedication shall be recorded with the auditor or recording officer of the county where the cemetery is located at least sixty days before filing the proceedings in superior court. [2009 c 102 § 13; 2005 c 365 § 75; 1999 c 367 § 2; 1987 c 331 § 34; 1943 c 247 § 76; Rem. Supp. 1943 § 3778-76.]

Funeral directors and embalmers account and cemetery account abolished, moneys transferred to funeral and cemetery account—2009 c 102: See note following RCW 18.39.810.

Effective date—1987 c 331: See RCW 68.05.900.

Chapter 68.40 RCW
ENDOWMENT AND NONENDOWMENT CARE

Sections

68.40.040 Endowment care fiscal reports—Review by plot owners.

68.40.040 Endowment care fiscal reports—Review by plot owners. A cemetery authority not exempt under this chapter shall file in its principal office for review by plot owners the previous seven fiscal years' endowment care reports as filed with the funeral and cemetery board in accordance with RCW 68.44.150. [2009 c 102 § 14; 1987 c 331 § 37; 1953 c 290 § 7; 1943 c 247 § 122; Rem. Supp. 1943 § 3778-122.]

Funeral directors and embalmers account and cemetery account abolished, moneys transferred to funeral and cemetery account—2009 c 102: See note following RCW 18.39.810.

Chapter 68.44 RCW
ENDOWMENT CARE FUND

Sections

68.44.115 Trustee to file statement with board—Resignation of trusteeship.
68.44.150 Annual report.

68.44.115 Trustee to file statement with board—Resignation of trusteeship. To be considered qualified as a trustee, each trustee of an endowment care fund appointed in accordance with this chapter shall file with the board a statement of acceptance of fiduciary responsibility, on a form approved by the board, before assuming the duties of trustee. The trustee shall remain in the trustee's fiduciary capacity until such time as the trustee advises the funeral and cemetery board in writing of the trustee's resignation of trusteeship. [2009 c 102 § 15; 1987 c 331 § 44.]

Funeral directors and embalmers account and cemetery account abolished, moneys transferred to funeral and cemetery account—2009 c 102: See note following RCW 18.39.810.

68.44.150 Annual report. The cemetery authority or the trustees in whose names the funds are held shall, annually, and within ninety days after the end of the calendar or fiscal year of the cemetery authority, file in its office and with the funeral and cemetery board endowment care trust fund, a report showing the actual financial condition of the funds. The report must be signed by an officer of the cemetery authority or one or more of the trustees. The report must be maintained for a period of seven years. [2009 c 102 § 16; 2005 c 365 § 123; 1987 c 331 § 48; 1979 c 21 § 21; 1943 c 247 § 115; Rem. Supp. 1943 § 3778-115.]

Funeral directors and embalmers account and cemetery account abolished, moneys transferred to funeral and cemetery account—2009 c 102: See note following RCW 18.39.810.

Chapter 68.46 RCW
PREARRANGEMENT CONTRACTS

Sections

68.46.010 Definitions.
68.46.090 Financial reports—Filing—Verification.
68.46.130 Exemptions from chapter granted by board.

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

(1) "Board" means the funeral and cemetery board established under RCW 18.39.173 or its authorized representative.

(2) "Cemetery merchandise or services" and "merchandise or services" mean those services normally performed by cemetery authorities, including the sale of monuments, markers, memorials, nameplates, liners, vaults, boxes, urns, vases, interment services, or any one or more of them.

(3) "Prearrangement contract" means a contract for purchase of cemetery merchandise or services, unconstructed crypts or niches, or undeveloped graves to be furnished at a future date for a specific consideration which is paid in advance by one or more payments in one sum or by installment payments.

(4) "Prearrangement trust fund" means all funds required to be maintained in one or more funds for the benefit of beneficiaries by either this chapter or by the terms of a prearrangement contract, as herein defined.

(5) "Undeveloped grave" means any grave in an area which a cemetery authority has not landscaped, groomed, or developed to the extent customary in the cemetery industry.

[2009 c 102 § 17; 2005 c 365 § 125; 1979 c 21 § 22; 1975 1st ex.s. c 55 § 1; 1973 1st ex.s. c 68 § 1.]

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

Funeral directors and embalmers account and cemetery account abolished, moneys transferred to funeral and cemetery account—2009 c 102: See note following RCW 18.39.810.

68.46.090 Financial reports—Filing—Verification. Any cemetery authority selling prearrangement merchandise or other prearrangement services shall file in its office and with the board a written report upon forms prepared by the board which shall state the amount of the principle of the prearrangement trust fund, the depository of such fund, and cash on hand which is or may be due to the fund as well as other information the board may deem appropriate. All information appearing on such written reports shall be revised at least annually. These reports shall be verified by the president, or the vice president, and one other officer of the cemetery authority, the accountant or auditor who prepared the report, and, if required by the board for good cause, a certified public accountant in accordance with generally accepted auditing standards. [2009 c 102 § 18; 2005 c 365 § 135; 1983 c 190 § 1; 1977 ex.s. c 351 § 5; 1973 1st ex.s. c 68 § 9.]

Funeral directors and embalmers account and cemetery account abolished, moneys transferred to funeral and cemetery account—2009 c 102: See note following RCW 18.39.810.

Severability—1977 ex.s. c 351: See note following RCW 68.05.040.

68.46.130 Exemptions from chapter granted by board. The board may grant an exemption from any or all of the requirements of this chapter relating to prearrangement contracts to any cemetery authority which:

(1) Sells less than twenty prearrangement contracts per year; and

(2) Deposits one hundred percent of all funds received into a trust fund under RCW 68.46.030, as now or hereafter amended. [2009 c 102 § 19; 1979 c 21 § 43.]

Funeral directors and embalmers account and cemetery account abolished, moneys transferred to funeral and cemetery account—2009 c 102: See note following RCW 18.39.810.

Chapter 68.50 RCW
HUMAN REMAINS

Sections

68.50.107 State toxicological laboratory established—State toxicologist.
68.50.230 Human remains that have not been disposed—Rules.

68.50.107 State toxicological laboratory established—State toxicologist. There shall be established in conjunction with the chief of the Washington state patrol and under the authority of the state forensic investigations council a state toxicological laboratory under the direction of the state toxicologist whose duty it will be to perform all necessary toxicologic procedures requested by all coroners, medical examiners, and prosecuting attorneys. The state forensic investigations council, after consulting with the chief of the Washington state patrol and director of the bureau of forensic laboratory services, shall appoint a toxicologist as state toxicologist, who shall report to the director of the bureau of forensic laboratory services and the office of the chief of the Washington state patrol. Toxicological services shall be funded by disbursement from the spirits, beer, and wine restaurant; spirits, beer, and wine private club; spirits, beer, and wine nightclub; and sports entertainment facility license fees as provided in RCW 66.08.180 and by appropriation from the death investigations account as provided in RCW 43.79.445. [2009 c 271 § 11. Prior: 1999 c 281 § 13; 1999 c 40 § 8; 1995 c 398 § 10; 1986 c 87 § 2; 1983 1st ex.s. c 16 § 10; 1975-'76 2nd ex.s. c 84 § 1; 1970 ex.s. c 24 § 1; 1953 c 188 § 13. Formerly RCW 68.08.107.]

Effective date—1999 c 40: See note following RCW 43.103.010.

Effective date—1986 c 87: See note following RCW 66.08.180.

Severability—Effective date—1983 1st ex.s. c 16: See RCW 43.103.900 and 43.103.901.

State forensic investigations council: Chapter 43.103 RCW.

68.50.230 Human remains that have not been disposed—Rules. (1) Whenever any human remains shall have been in the lawful possession of any person, firm, corporation, or association for a period of ninety days or more, and the relatives of, or persons interested in, the deceased person shall fail, neglect, or refuse to direct the disposition, the human remains may be disposed of by the person, firm, corporation, or association having such lawful possession thereof, under and in accordance with rules adopted by the funeral and cemetery board, not inconsistent with any statute of the state of Washington or rule adopted by the state board of health.

(2)(a) The department of veterans affairs may certify that the deceased person to whom subsection (1) of this section applies was a veteran or the dependent of a veteran eligible for interment at a federal or state veterans' cemetery.

(b) Upon certification of eligible veteran or dependent of a veteran status under (a) of this subsection, the person, firm, corporation, or association in possession of the veteran's or veteran's dependent's remains shall transfer the custody and control of the remains to the department of veterans affairs.

(c) The transfer of human remains under (b) of this subsection does not create:

(i) A private right of action against the state or its officers and employees or instrumentalities, or against any person, firm, corporation, or association transferring the remains; or

(ii) Liability on behalf of the state, the state's officers, employees, or instrumentalities; or on behalf of the person, firm, corporation, or association transferring the remains. [2009 c 102 § 20; 2009 c 56 § 1; 2005 c 365 § 146; 1985 c 402 § 9; 1979 c 158 § 218; 1937 c 108 § 14; RRS § 8323-3. Formerly RCW 68.08.230.]

Reviser's note: This section was amended by 2009 c 56 § 1 and by 2009 c 102 § 20, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Funeral directors and embalmers account and cemetery account abolished, moneys transferred to funeral and cemetery account—2009 c 102: See note following RCW 18.39.810.

Legislative finding—1985 c 402: See note following RCW 68.50.185.

Chapter 68.60 RCW

ABANDONED AND HISTORIC CEMETERIES AND HISTORIC GRAVES

Sections

68.60.030 Preservation and maintenance corporations—Authorization of other corporations to restore, maintain, and protect abandoned cemeteries.
68.60.050 Protection of historic graves—Penalty.
68.60.060 Violations—Civil liability.

68.60.030 Preservation and maintenance corporations—Authorization of other corporations to restore, maintain, and protect abandoned cemeteries. (1)(a) The department of archaeology and historic preservation may grant by nontransferable certificate authority to maintain and protect an abandoned cemetery upon application made by a preservation organization which has been incorporated for the purpose of restoring, maintaining, and protecting an abandoned cemetery. Such authority shall be limited to the care, maintenance, restoration, protection, and historical preservation of the abandoned cemetery, and shall not include authority to make burials. In order to activate a historical cemetery for burials, an applicant must apply for a certificate of authority to operate a cemetery from the funeral and cemetery board.

(b) Those preservation and maintenance corporations that are granted authority to maintain and protect an abandoned cemetery shall be entitled to hold and possess burial records, maps, and other historical documents as may exist. Maintenance and preservation corporations that are granted authority to maintain and protect an abandoned cemetery shall not be liable to those claiming burial rights, ancestral ownership, or to any other person or organization alleging to have control by any form of conveyance not previously recorded at the county auditor's office within the county in which the abandoned cemetery exists. Such organizations shall not be liable for any reasonable alterations made during restoration work on memorials, roadways, walkways, features, plantings, or any other detail of the abandoned cemetery.

(c) Should the maintenance and preservation corporation be dissolved, the department of archaeology and historic preservation shall revoke the certificate of authority.

(d) Maintenance and preservation corporations that are granted authority to maintain and protect an abandoned cemetery may establish care funds.

(2) Except as provided in subsection (1) of this section, the department of archaeology and historic preservation may, in its sole discretion, authorize any Washington nonprofit corporation that is not expressly incorporated for the purpose of restoring, maintaining, and protecting an abandoned cemetery, to restore, maintain, and protect one or more abandoned cemeteries. The authorization may include the right of access to any burial records, maps, and other historical documents, but shall not include the right to be the permanent custodian of original records, maps, or documents. This authorization shall be granted by a nontransferable certificate of authority. Any nonprofit corporation authorized and acting under this subsection is immune from liability to the same extent as if it were a preservation organization holding a certificate of authority under subsection (1) of this section.

(3) The department of archaeology and historic preservation shall establish standards and guidelines for granting certificates of authority under subsections (1) and (2) of this section to assure that any restoration, maintenance, and protection activities authorized under this subsection are conducted and supervised in an appropriate manner. [2009 c 102 § 21; 2005 c 365 § 150; 1995 c 399 § 168; 1993 c 67 § 1; 1990 c 92 § 3.]

Funeral directors and embalmers account and cemetery account abolished, moneys transferred to funeral and cemetery account—2009 c 102: See note following RCW 18.39.810.

68.60.050 Protection of historic graves—Penalty. (1) Any person who knowingly removes, mutilates, defaces, injures, or destroys any historic grave shall be guilty of a class C felony punishable under chapter 9A.20 RCW. Persons disturbing historic graves through inadvertence, including disturbance through construction, shall reinter the human remains under the supervision of the department of archaeology and historic preservation. Expenses to reinter such human remains are to be provided by the department of archaeology and historic preservation to the extent that funds for this purpose are appropriated by the legislature.

(2) This section does not apply to actions taken in the performance of official law enforcement duties.

(3) It shall be a complete defense in a prosecution under subsection (1) of this section if the defendant can prove by a preponderance of evidence that the alleged acts were accidental or inadvertent and that reasonable efforts were made to preserve the remains accidentally disturbed or discovered, and that the accidental discovery or disturbance was properly reported. [2009 c 102 § 22; 1999 c 67 § 1; 1989 c 44 § 5. Formerly RCW 68.05.420.]

Funeral directors and embalmers account and cemetery account abolished, moneys transferred to funeral and cemetery account—2009 c 102: See note following RCW 18.39.810.

Intent—1989 c 44: See RCW 27.44.030.

Captions not law—Liberal construction—1989 c 44: See RCW 27.44.900 and 27.44.901.

68.60.060 Violations—Civil liability. Any person who violates any provision of this chapter is liable in a civil action by and in the name of the department of archaeology and historic preservation to pay all damages occasioned by their unlawful acts. The sum recovered shall be applied in payment for the repair and restoration of the property injured or destroyed and to the care fund if one is established. [2009 c 102 § 23; 1990 c 92 § 5.]

Funeral directors and embalmers account and cemetery account abolished, moneys transferred to funeral and cemetery account—2009 c 102: See note following RCW 18.39.810.

Title 69

FOOD, DRUGS, COSMETICS, AND POISONS

Chapters

69.04 Intrastate commerce in food, drugs, and cosmetics.
69.07 Washington food processing act.

69.41 Legend drugs—Prescription drugs.
69.50 Uniform controlled substances act.

Chapter 69.04 RCW

INTRASTATE COMMERCE IN FOOD, DRUGS, AND COSMETICS

Sections

69.04.009 "Drugs."
69.04.010 "Device."
69.04.024 "Food additive," "safe."
69.04.394 Regulations permitting tolerance of harmful matter—Food additives.
69.04.396 Regulations permitting tolerance of harmful matter—Color additives.
69.04.480 Drugs—Misbranding for failure to state content of habit forming drug.

69.04.009 "Drugs." The term "drug" means (1) articles recognized in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, or any supplement to any of them; and (2) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in human beings or other animals; and (3) articles (other than food) intended to affect the structure or any function of the body of human beings or other animals; and (4) articles intended for use as a component of any article specified in clause (1), (2), or (3); but does not include devices or their components, parts, or accessories. [2009 c 549 § 1018; 1945 c 257 § 10; Rem. Supp. 1945 § 6163-59. Prior: 1907 c 211 § 2.]

69.04.010 "Device." The term "device" (except when used in RCW 69.04.016 and in RCW 69.04.040(10), 69.04.270, 69.04.690, and in RCW 69.04.470 as used in the sentence "(as compared with other words, statements, designs, or devices, in the labeling)") means instruments, apparatus, and contrivances, including their components, parts and accessories, intended (1) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in human beings or other animals; or (2) to affect the structure or any function of the body of human beings or other animals. [2009 c 549 § 1019; 1945 c 257 § 11; Rem. Supp. 1945 § 6163-60.]

69.04.024 "Food additive," "safe." (1) The term "food additive" means any substance the intended use of which results or may reasonably be expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food (including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food; and including any source of radiation intended for any such use), if such substance generally is recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures (or, in the case of a substance used in food prior to January 1, 1958; through either scientific procedures or experience based on common use in food) to be unsafe under the conditions of its intended use; except that such term does not include; (a) a pesticide chemical in or on a raw agricultural commodity; or (b) a pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of any raw agricultural commodity; or (c) a color additive.

(2) The term "safe" as used in the food additive definition has reference to the health of human beings or animals. [2009 c 549 § 1020; 1963 c 198 § 11.]

69.04.394 Regulations permitting tolerance of harmful matter—Food additives. (1) A food additive shall, with respect to any particular use or intended use of such additives, be deemed unsafe for the purpose of the application of clause (2)(c) of RCW 69.04.210, unless:

(a) It and its use or intended use conform to the terms of an exemption granted, pursuant to a regulation under subsection (2) hereof providing for the exemption from the requirements of this section for any food additive, and any food bearing or containing such additive, intended solely for investigational use by qualified experts when in the director's opinion such exemption is consistent with the public health; or

(b) There is in effect, and it and its use or intended use are in conformity with a regulation issued or effective under subsection (2) hereof prescribing the conditions under which such additive may be safely used.

While such a regulation relating to a food additive is in effect, a food shall not, by reason of bearing or containing such an additive in accordance with the regulation, be considered adulterated within the meaning of clause (1) of RCW 69.04.210.

(2) The regulations promulgated under section 409 of the Federal Food, Drug and Cosmetic Act, as of July 1, 1975, prescribing the conditions under which such food additive may be safely used, are hereby adopted as the regulations applicable to this chapter: PROVIDED, That the director is hereby authorized to adopt by regulation any new or future amendments to the federal regulations. The director is also authorized to issue regulations in the absence of federal regulations and to prescribe the conditions under which a food additive may be safely used and exemptions where such food additive is to be used solely for investigational purposes; either upon his or her own motion or upon the petition of any interested party requesting that such a regulation be established. It shall be incumbent upon such petitioner to establish, by data submitted to the director, that a necessity exists for such regulation and that the effect of such a regulation will not be detrimental to the public health. If the data furnished by the petitioner is not sufficient to allow the director to determine whether such a regulation should be promulgated, the director may require additional data to be submitted and failure to comply with this request shall be sufficient grounds to deny the request of the petitioner for the issuance of such a regulation.

(3) In adopting any new or amended regulations pursuant to this section, the director shall give appropriate consideration, among other relevant factors, to the following: (a) The purpose of this chapter being to promote uniformity of state legislation with the federal act; (b) the probable consumption of the additive and of any substance formed in or on food because of the use of the additive; (c) the cumulative effect of such additive in the diet of human beings or animals, taking into account any chemically or pharmacologically related substance or substances in such diet; and (d) safety factors

which in the opinion of experts qualified by scientific training and experience to evaluate the safety of food additives are generally recognized as appropriate for the use of animal experimentation data. [2009 c 549 § 1021; 1975 1st ex.s. c 7 § 27; 1963 c 198 § 4.]

Purpose of section: See RCW 69.04.398.

69.04.396 Regulations permitting tolerance of harmful matter—Color additives. (1) A color additive shall, with respect to any particular use (for which it is being used or intended to be used or is represented as suitable) in or on food, be deemed unsafe for the purpose of the application of RCW 69.04.231, unless:

(a) There is in effect, and such color additive and such use are in conformity with, a regulation issued under this section listing such additive for such use, including any provision of such regulation prescribing the conditions under which such additive may be safely used;

(b) Such additive and such use thereof conform to the terms of an exemption for experimental use which is in effect pursuant to regulation under this section.

While there are in effect regulations under this section relating to a color additive or an exemption with respect to such additive a food shall not, by reason of bearing or containing such additive in all respects in accordance with such regulations or such exemption, be considered adulterated within the meaning of clause (1) of RCW 69.04.210.

(2) The regulations promulgated under section 706 of the Federal Food, Drug and Cosmetic Act, as of July 1, 1975, prescribing the use or limited use of such color additive, are hereby adopted as the regulations applicable to this chapter: PROVIDED, That the director is hereby authorized to adopt by regulation any new or future amendments to the federal regulations. The director is also authorized to issue regulations in the absence of federal regulations and to prescribe therein the conditions under which a color additive may be safely used including exemptions for experimental purposes. Such a regulation may be issued either upon the director's own motion or upon the petition of any interested party requesting that such a regulation be established. It shall be incumbent upon such petitioner to establish, by data submitted to the director, that a necessity exists for such regulation and that the effect of such a regulation will not be detrimental to the public health. If the data furnished by the petitioner is not sufficient to allow the director to determine whether such a regulation should be promulgated, the director may require additional data to be submitted and failure to comply with this request shall be sufficient grounds to deny the request of the petitioner for the issuance of such a regulation.

(3) In adopting any new or amended regulations pursuant to this section, the director shall give appropriate consideration, among other relevant factors, to the following: (a) The purpose of this chapter being to promote uniformity of state legislation with the federal act; (b) the probable consumption of, or other relevant exposure from, the additive and of any substance formed in or on food because of the use of the additive; (c) the cumulative effect, if any, of such additive in the diet of human beings or animals, taking into account the same or any chemically or pharmacologically related substance or substances in such diet; (d) safety factors which, in the opinion of experts qualified by scientific training and experience to evaluate the safety of color additives for the use or uses for which the additive is proposed to be listed, are generally recognized as appropriate for the use of animal experimentation data; (e) the availability of any needed practicable methods of analysis for determining the identity and quantity of (i) the pure dye and all intermediates and other impurities contained in such color additives, (ii) such additive in or on any article of food, and (iii) any substance formed in or on such article because of the use of such additive; and (f) the conformity by the manufacturer with the established standards in the industry relating to the proper formation of such color additive so as to result in a finished product safe for use as a color additive. [2009 c 549 § 1022; 1975 1st ex.s. c 7 § 28; 1963 c 198 § 6.]

Purpose of section: See RCW 69.04.398.

Food—Adulteration by color additive: RCW 69.04.231.

69.04.480 Drugs—Misbranding for failure to state content of habit forming drug. A drug or device shall be deemed to be misbranded if it is for use by human beings and contains any quantity of the narcotic or hypnotic substance alpha eucaine, barbituric acid, beta eucaine, bromal, cannabis, carbromal, chloral, coca, cocaine, codeine, heroin, marijuana, morphine, opium, paraldehyde, peyote, or sulphomethane; or any chemical derivative of such substance, which derivative has been designated as habit forming by regulations promulgated under section 502(d) of the federal act; unless its label bears the name and quantity or proportion of such substance or derivative and in juxtaposition therewith the statement "Warning—May be habit forming." [2009 c 549 § 1023; 1945 c 257 § 66; Rem. Supp. 1945 § 6163-115. Prior: 1923 c 36 § 2; 1907 c 211 § 4.]

Chapter 69.07 RCW
WASHINGTON FOOD PROCESSING ACT

Sections

69.07.103 Poultry—Slaughter, preparation, sale—One thousand or fewer—Special permit—Rules—Fee.

69.07.103 Poultry—Slaughter, preparation, sale—One thousand or fewer—Special permit—Rules—Fee. (1) A special permit issued by the department under this section is required for the slaughter, preparation, and sale of one thousand or fewer poultry in a calendar year by a poultry producer for the sale of whole raw poultry directly to the ultimate consumer at the producer's farm. Activities conducted under the permit are exempt from any other licensing requirements of this chapter.

(2)(a) The department must adopt by rule requirements for the permit. The requirements must be generally patterned after those established by the state board of health for temporary food service establishments, but must be tailored specifically to poultry slaughter, preparation, and sale activities. The requirements must include, but are not limited to, those for: Cooling procedures, when applicable; sanitary facilities, equipment, and utensils; clean water; washing and other hygienic practices; and waste and wastewater disposal.

(b) A permit expires December 31st and may be issued for either one or two years as requested by the permit applicant upon payment of the applicable fee in accordance with subsection (4) of this section.

(3) The department shall conduct such inspections as are reasonably necessary to ensure compliance with permit requirements.

(4) The fee for a special permit is seventy-five dollars for one year, or one hundred twenty-five dollars for two years. [2009 c 114 § 1; 2003 c 397 § 2.]

Chapter 69.41 RCW
LEGEND DRUGS—PRESCRIPTION DRUGS

Sections

69.41.010 Definitions.
69.41.190 Preferred drug substitution—Exceptions—Notice—Limited restrictions.

69.41.010 Definitions. As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise:

(1) "Administer" means the direct application of a legend drug whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:

(a) A practitioner; or

(b) The patient or research subject at the direction of the practitioner.

(2) "Community-based care settings" include: Community residential programs for the developmentally disabled, certified by the department of social and health services under chapter 71A.12 RCW; adult family homes licensed under chapter 70.128 RCW; and boarding homes licensed under chapter 18.20 RCW. Community-based care settings do not include acute care or skilled nursing facilities.

(3) "Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a legend drug, whether or not there is an agency relationship.

(4) "Department" means the department of health.

(5) "Dispense" means the interpretation of a prescription or order for a legend drug and, pursuant to that prescription or order, the proper selection, measuring, compounding, labeling, or packaging necessary to prepare that prescription or order for delivery.

(6) "Dispenser" means a practitioner who dispenses.

(7) "Distribute" means to deliver other than by administering or dispensing a legend drug.

(8) "Distributor" means a person who distributes.

(9) "Drug" means:

(a) Substances recognized as drugs in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, or any supplement to any of them;

(b) Substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in human beings or animals;

(c) Substances (other than food, minerals or vitamins) intended to affect the structure or any function of the body of human beings or animals; and

(d) Substances intended for use as a component of any article specified in (a), (b), or (c) of this subsection. It does not include devices or their components, parts, or accessories.

(10) "Electronic communication of prescription information" means the communication of prescription information by computer, or the transmission of an exact visual image of a prescription by facsimile, or other electronic means for original prescription information or prescription refill information for a legend drug between an authorized practitioner and a pharmacy or the transfer of prescription information for a legend drug from one pharmacy to another pharmacy.

(11) "In-home care settings" include an individual's place of temporary and permanent residence, but does not include acute care or skilled nursing facilities, and does not include community-based care settings.

(12) "Legend drugs" means any drugs which are required by state law or regulation of the state board of pharmacy to be dispensed on prescription only or are restricted to use by practitioners only.

(13) "Legible prescription" means a prescription or medication order issued by a practitioner that is capable of being read and understood by the pharmacist filling the prescription or the nurse or other practitioner implementing the medication order. A prescription must be hand printed, typewritten, or electronically generated.

(14) "Medication assistance" means assistance rendered by a nonpractitioner to an individual residing in a community-based care setting or in-home care setting to facilitate the individual's self-administration of a legend drug or controlled substance. It includes reminding or coaching the individual, handing the medication container to the individual, opening the individual's medication container, using an enabler, or placing the medication in the individual's hand, and such other means of medication assistance as defined by rule adopted by the department. A nonpractitioner may help in the preparation of legend drugs or controlled substances for self-administration where a practitioner has determined and communicated orally or by written direction that such medication preparation assistance is necessary and appropriate. Medication assistance shall not include assistance with intravenous medications or injectable medications, except prefilled insulin syringes.

(15) "Person" means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

(16) "Practitioner" means:

(a) A physician under chapter 18.71 RCW, an osteopathic physician or an osteopathic physician and surgeon under chapter 18.57 RCW, a dentist under chapter 18.32 RCW, a podiatric physician and surgeon under chapter 18.22 RCW, a veterinarian under chapter 18.92 RCW, a registered nurse, advanced registered nurse practitioner, or licensed practical nurse under chapter 18.79 RCW, an optometrist under chapter 18.53 RCW who is certified by the optometry board under RCW 18.53.010, an osteopathic physician assistant under chapter 18.57A RCW, a physician assistant under chapter 18.71A RCW, a naturopath licensed under chapter 18.36A RCW, a pharmacist under chapter 18.64 RCW, or, when acting under the required supervision of a dentist

licensed under chapter 18.32 RCW, a dental hygienist licensed under chapter 18.29 RCW;

(b) A pharmacy, hospital, or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or to administer a legend drug in the course of professional practice or research in this state; and

(c) A physician licensed to practice medicine and surgery or a physician licensed to practice osteopathic medicine and surgery in any state, or province of Canada, which shares a common border with the state of Washington.

(17) "Secretary" means the secretary of health or the secretary's designee. [2009 c 549 § 1024; 2006 c 8 § 115. Prior: 2003 c 257 § 2; 2003 c 140 § 11; 2000 c 8 § 2; prior: 1998 c 222 § 1; 1998 c 70 § 2; 1996 c 178 § 16; 1994 sp.s. c 9 § 736; prior: 1989 1st ex.s. c 9 § 426; 1989 c 36 § 3; 1984 c 153 § 17; 1980 c 71 § 1; 1979 ex.s. c 139 § 1; 1973 1st ex.s. c 186 § 1.]

Findings—2006 c 8: "The legislature finds that prescription drug errors occur because the pharmacist or nurse cannot read the prescription from the physician or other provider with prescriptive authority. The legislature further finds that legible prescriptions can prevent these errors." [2006 c 8 § 114.]

Findings—Intent—Part headings and subheadings not law—Severability—2006 c 8: See notes following RCW 5.64.010.

Effective date—2003 c 140: See note following RCW 18.79.040.

Findings—Intent—2000 c 8: "The legislature finds that we have one of the finest health care systems in the world and excellent professionals to deliver that care. However, there are incidents of medication errors that are avoidable and serious mistakes that are preventable. Medical errors throughout the health care system constitute one of the nation's leading causes of death and injury resulting in over seven thousand deaths a year, according to a recent report from the institute of medicine. The majority of medical errors do not result from individual recklessness, but from basic flaws in the way the health system is organized. There is a need for a comprehensive strategy for government, industry, consumers, and health providers to reduce medical errors. The legislature declares a need to bring about greater safety for patients in this state who depend on prescription drugs.

It is the intent of the legislature to promote medical safety as a top priority for all citizens of our state." [2000 c 8 § 1.]

Effective date—1996 c 178: See note following RCW 18.35.110.

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

69.41.190 Preferred drug substitution—Exceptions—Notice—Limited restrictions. (1)(a) Except as provided in subsection (2) of this section, any pharmacist filling a prescription under a state purchased health care program as defined in RCW 41.05.011(2) shall substitute, where identified, a preferred drug for any nonpreferred drug in a given therapeutic class, unless the endorsing practitioner has indicated on the prescription that the nonpreferred drug must be dispensed as written, or the prescription is for a refill of an antipsychotic, antidepressant, antiepileptic, chemotherapy, antiretroviral, or immunosuppressive drug, or for the refill of a immunomodulator/antiviral treatment for hepatitis C for which an established, fixed duration of therapy is prescribed for at least twenty-four weeks but no more than forty-eight weeks, in which case the pharmacist shall dispense the prescribed nonpreferred drug.

(b) When a substitution is made under (a) of this subsection, the dispensing pharmacist shall notify the prescribing practitioner of the specific drug and dose dispensed.

(2)(a) A state purchased health care program may impose limited restrictions on an endorsing practitioner's authority to write a prescription to dispense as written only under the following circumstances:

(i) There is statistical or clear data demonstrating the endorsing practitioner's frequency of prescribing dispensed as written for nonpreferred drugs varies significantly from the prescribing patterns of his or her peers;

(ii) The medical director of a state purchased health program has: (A) Presented the endorsing practitioner with data that indicates the endorsing practitioner's prescribing patterns vary significantly from his or her peers, (B) provided the endorsing practitioner an opportunity to explain the variation in his or her prescribing patterns to those of his or her peers, and (C) if the variation in prescribing patterns cannot be explained, provided the endorsing practitioner sufficient time to change his or her prescribing patterns to align with those of his or her peers; and

(iii) The restrictions imposed under (a) of this subsection (2) must be limited to the extent possible to reduce variation in prescribing patterns and shall remain in effect only until such time as the endorsing practitioner can demonstrate a reduction in variation in line with his or her peers.

(b) A state purchased health care program may immediately designate an available, less expensive, equally effective generic product in a previously reviewed drug class as a preferred drug, without first submitting the product to review by the pharmacy and therapeutics committee established pursuant to RCW 70.14.050.

(c) For a patient's first course of treatment within a therapeutic class of drugs, a state purchased health care program may impose limited restrictions on endorsing practitioners' authority to write a prescription to dispense as written, only under the following circumstances:

(i) There is a less expensive, equally effective therapeutic alternative generic product available to treat the condition;

(ii) The drug use review board established under WAC 388-530-4000 reviews and provides recommendations as to the appropriateness of the limitation;

(iii) Notwithstanding the limitation set forth in (c)(ii) of this subsection (2), the endorsing practitioner shall have an opportunity to request as medically necessary, that the brand name drug be prescribed as the first course of treatment;

(iv) The state purchased health care program may provide, where available, prescription, emergency room, diagnosis, and hospitalization history with the endorsing practitioner; and

(v) Specifically for antipsychotic restrictions, the state purchased health care program shall effectively guide good practice without interfering with the timeliness of clinical decision making. Department of social and health services prior authorization programs must provide for responses within twenty-four hours and at least a seventy-two hour emergency supply of the requested drug.

(d) If, within a therapeutic class, there is an equally effective therapeutic alternative over-the-counter drug available, a state purchased health care program may designate the over-the-counter drug as the preferred drug.

(e) A state purchased health care program may impose limited restrictions on endorsing practitioners' authority to prescribe pharmaceuticals to be dispensed as written for a purpose outside the scope of their approved labels only under the following circumstances:

(i) There is a less expensive, equally effective on-label product available to treat the condition;

(ii) The drug use review board established under WAC 388-530-4000 reviews and provides recommendations as to the appropriateness of the limitation; and

(iii) Notwithstanding the limitation set forth in (e)(ii) of this subsection (2), the endorsing practitioner shall have an opportunity to request as medically necessary, that the drug be prescribed for a covered off-label purpose.

(f) The provisions of this subsection related to the definition of medically necessary, prior authorization procedures and patient appeal rights shall be implemented in a manner consistent with applicable federal and state law.

(3) Notwithstanding the limitations in subsection (2) of this section, for refills for an antipsychotic, antidepressant, antiepileptic, chemotherapy, antiretroviral, or immunosuppressive drug, or for the refill of an immunomodulator antiviral treatment for hepatitis C for which an established, fixed duration of therapy is prescribed for at least twenty-four weeks by no more than forty-eight weeks, the pharmacist shall dispense the prescribed nonpreferred drug. [2009 c 575 § 1; 2006 c 233 § 1; 2003 1st sp.s. c 29 § 5.]

Effective date—2009 c 575: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 19, 2009]." [2009 c 575 § 2.]

Finding—Intent—Severability—Conflict with federal requirements—Effective date—2003 1st sp.s. c 29: See notes following RCW 74.09.650.

Chapter 69.50 RCW
UNIFORM CONTROLLED SUBSTANCES ACT

Sections

69.50.505 Seizure and forfeiture.
69.50.520 Repealed.

69.50.505 Seizure and forfeiture. (1) The following are subject to seizure and forfeiture and no property right exists in them:

(a) All controlled substances which have been manufactured, distributed, dispensed, acquired, or possessed in violation of this chapter or chapter 69.41 or 69.52 RCW, and all hazardous chemicals, as defined in RCW 64.44.010, used or intended to be used in the manufacture of controlled substances;

(b) All raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this chapter or chapter 69.41 or 69.52 RCW;

(c) All property which is used, or intended for use, as a container for property described in (a) or (b) of this subsection;

(d) All conveyances, including aircraft, vehicles, or vessels, which are used, or intended for use, in any manner to facilitate the sale, delivery, or receipt of property described in (a) or (b) of this subsection, except that:

(i) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter or chapter 69.41 or 69.52 RCW;

(ii) No conveyance is subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without the owner's knowledge or consent;

(iii) No conveyance is subject to forfeiture under this section if used in the receipt of only an amount of marijuana for which possession constitutes a misdemeanor under RCW 69.50.4014;

(iv) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to the act or omission; and

(v) When the owner of a conveyance has been arrested under this chapter or chapter 69.41 or 69.52 RCW the conveyance in which the person is arrested may not be subject to forfeiture unless it is seized or process is issued for its seizure within ten days of the owner's arrest;

(e) All books, records, and research products and materials, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this chapter or chapter 69.41 or 69.52 RCW;

(f) All drug paraphernalia;

(g) All moneys, negotiable instruments, securities, or other tangible or intangible property of value furnished or intended to be furnished by any person in exchange for a controlled substance in violation of this chapter or chapter 69.41 or 69.52 RCW, all tangible or intangible personal property, proceeds, or assets acquired in whole or in part with proceeds traceable to an exchange or series of exchanges in violation of this chapter or chapter 69.41 or 69.52 RCW, and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of this chapter or chapter 69.41 or 69.52 RCW. A forfeiture of money, negotiable instruments, securities, or other tangible or intangible property encumbered by a bona fide security interest is subject to the interest of the secured party if, at the time the security interest was created, the secured party neither had knowledge of nor consented to the act or omission. No personal property may be forfeited under this subsection (1)(g), to the extent of the interest of an owner, by reason of any act or omission which that owner establishes was committed or omitted without the owner's knowledge or consent; and

(h) All real property, including any right, title, and interest in the whole of any lot or tract of land, and any appurtenances or improvements which are being used with the knowledge of the owner for the manufacturing, compounding, processing, delivery, importing, or exporting of any controlled substance, or which have been acquired in whole or in part with proceeds traceable to an exchange or series of exchanges in violation of this chapter or chapter 69.41 or 69.52 RCW, if such activity is not less than a class C felony and a substantial nexus exists between the commercial pro-

duction or sale of the controlled substance and the real property. However:

(i) No property may be forfeited pursuant to this subsection (1)(h), to the extent of the interest of an owner, by reason of any act or omission committed or omitted without the owner's knowledge or consent;

(ii) The bona fide gift of a controlled substance, legend drug, or imitation controlled substance shall not result in the forfeiture of real property;

(iii) The possession of marijuana shall not result in the forfeiture of real property unless the marijuana is possessed for commercial purposes, the amount possessed is five or more plants or one pound or more of marijuana, and a substantial nexus exists between the possession of marijuana and the real property. In such a case, the intent of the offender shall be determined by the preponderance of the evidence, including the offender's prior criminal history, the amount of marijuana possessed by the offender, the sophistication of the activity or equipment used by the offender, and other evidence which demonstrates the offender's intent to engage in commercial activity;

(iv) The unlawful sale of marijuana or a legend drug shall not result in the forfeiture of real property unless the sale was forty grams or more in the case of marijuana or one hundred dollars or more in the case of a legend drug, and a substantial nexus exists between the unlawful sale and the real property; and

(v) A forfeiture of real property encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party, at the time the security interest was created, neither had knowledge of nor consented to the act or omission.

(2) Real or personal property subject to forfeiture under this chapter may be seized by any board inspector or law enforcement officer of this state upon process issued by any superior court having jurisdiction over the property. Seizure of real property shall include the filing of a lis pendens by the seizing agency. Real property seized under this section shall not be transferred or otherwise conveyed until ninety days after seizure or until a judgment of forfeiture is entered, whichever is later: PROVIDED, That real property seized under this section may be transferred or conveyed to any person or entity who acquires title by foreclosure or deed in lieu of foreclosure of a security interest. Seizure of personal property without process may be made if:

(a) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

(b) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon this chapter;

(c) A board inspector or law enforcement officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(d) The board inspector or law enforcement officer has probable cause to believe that the property was used or is intended to be used in violation of this chapter.

(3) In the event of seizure pursuant to subsection (2) of this section, proceedings for forfeiture shall be deemed commenced by the seizure. The law enforcement agency under whose authority the seizure was made shall cause notice to be served within fifteen days following the seizure on the owner of the property seized and the person in charge thereof and any person having any known right or interest therein, including any community property interest, of the seizure and intended forfeiture of the seized property. Service of notice of seizure of real property shall be made according to the rules of civil procedure. However, the state may not obtain a default judgment with respect to real property against a party who is served by substituted service absent an affidavit stating that a good faith effort has been made to ascertain if the defaulted party is incarcerated within the state, and that there is no present basis to believe that the party is incarcerated within the state. Notice of seizure in the case of property subject to a security interest that has been perfected by filing a financing statement in accordance with chapter 62A.9A RCW, or a certificate of title, shall be made by service upon the secured party or the secured party's assignee at the address shown on the financing statement or the certificate of title. The notice of seizure in other cases may be served by any method authorized by law or court rule including but not limited to service by certified mail with return receipt requested. Service by mail shall be deemed complete upon mailing within the fifteen day period following the seizure.

(4) If no person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of items specified in subsection (1)(d), (g), or (h) of this section within forty-five days of the service of notice from the seizing agency in the case of personal property and ninety days in the case of real property, the item seized shall be deemed forfeited. The community property interest in real property of a person whose spouse or domestic partner committed a violation giving rise to seizure of the real property may not be forfeited if the person did not participate in the violation.

(5) If any person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of items specified in subsection (1)(b), (c), (d), (e), (f), (g), or (h) of this section within forty-five days of the service of notice from the seizing agency in the case of personal property and ninety days in the case of real property, the person or persons shall be afforded a reasonable opportunity to be heard as to the claim or right. The notice of claim may be served by any method authorized by law or court rule including, but not limited to, service by first-class mail. Service by mail shall be deemed complete upon mailing within the forty-five day period following service of the notice of seizure in the case of personal property and within the ninety-day period following service of the notice of seizure in the case of real property. The hearing shall be before the chief law enforcement officer of the seizing agency or the chief law enforcement officer's designee, except where the seizing agency is a state agency as defined in RCW 34.12.020(4), the hearing shall be before the chief law enforcement officer of the seizing agency or an administrative law judge appointed under chapter 34.12 RCW, except that any person asserting a claim or right may remove the matter to a court of competent jurisdiction. Removal of any matter involving personal property may only be accomplished according to the rules of civil procedure. The person seeking removal of the matter must serve process against the state, county, political subdivision, or municipality that operates the seizing agency, and any

other party of interest, in accordance with RCW 4.28.080 or 4.92.020, within forty-five days after the person seeking removal has notified the seizing law enforcement agency of the person's claim of ownership or right to possession. The court to which the matter is to be removed shall be the district court when the aggregate value of personal property is within the jurisdictional limit set forth in RCW 3.66.020. A hearing before the seizing agency and any appeal therefrom shall be under Title 34 RCW. In all cases, the burden of proof is upon the law enforcement agency to establish, by a preponderance of the evidence, that the property is subject to forfeiture.

The seizing law enforcement agency shall promptly return the article or articles to the claimant upon a determination by the administrative law judge or court that the claimant is the present lawful owner or is lawfully entitled to possession thereof of items specified in subsection (1)(b), (c), (d), (e), (f), (g), or (h) of this section.

(6) In any proceeding to forfeit property under this title, where the claimant substantially prevails, the claimant is entitled to reasonable attorneys' fees reasonably incurred by the claimant. In addition, in a court hearing between two or more claimants to the article or articles involved, the prevailing party is entitled to a judgment for costs and reasonable attorneys' fees.

(7) When property is forfeited under this chapter the board or seizing law enforcement agency may:

(a) Retain it for official use or upon application by any law enforcement agency of this state release such property to such agency for the exclusive use of enforcing the provisions of this chapter;

(b) Sell that which is not required to be destroyed by law and which is not harmful to the public;

(c) Request the appropriate sheriff or director of public safety to take custody of the property and remove it for disposition in accordance with law; or

(d) Forward it to the drug enforcement administration for disposition.

(8)(a) When property is forfeited, the seizing agency shall keep a record indicating the identity of the prior owner, if known, a description of the property, the disposition of the property, the value of the property at the time of seizure, and the amount of proceeds realized from disposition of the property.

(b) Each seizing agency shall retain records of forfeited property for at least seven years.

(c) Each seizing agency shall file a report including a copy of the records of forfeited property with the state treasurer each calendar quarter.

(d) The quarterly report need not include a record of forfeited property that is still being held for use as evidence during the investigation or prosecution of a case or during the appeal from a conviction.

(9)(a) By January 31st of each year, each seizing agency shall remit to the state treasurer an amount equal to ten percent of the net proceeds of any property forfeited during the preceding calendar year. Money remitted shall be deposited in the state general fund.

(b) The net proceeds of forfeited property is the value of the forfeitable interest in the property after deducting the cost of satisfying any bona fide security interest to which the property is subject at the time of seizure; and in the case of sold property, after deducting the cost of sale, including reasonable fees or commissions paid to independent selling agents, and the cost of any valid landlord's claim for damages under subsection (15) of this section.

(c) The value of sold forfeited property is the sale price. The value of retained forfeited property is the fair market value of the property at the time of seizure, determined when possible by reference to an applicable commonly used index, such as the index used by the department of licensing for valuation of motor vehicles. A seizing agency may use, but need not use, an independent qualified appraiser to determine the value of retained property. If an appraiser is used, the value of the property appraised is net of the cost of the appraisal. The value of destroyed property and retained firearms or illegal property is zero.

(10) Forfeited property and net proceeds not required to be paid to the state treasurer shall be retained by the seizing law enforcement agency exclusively for the expansion and improvement of controlled substances related law enforcement activity. Money retained under this section may not be used to supplant preexisting funding sources.

(11) Controlled substances listed in Schedule I, II, III, IV, and V that are possessed, transferred, sold, or offered for sale in violation of this chapter are contraband and shall be seized and summarily forfeited to the state. Controlled substances listed in Schedule I, II, III, IV, and V, which are seized or come into the possession of the board, the owners of which are unknown, are contraband and shall be summarily forfeited to the board.

(12) Species of plants from which controlled substances in Schedules I and II may be derived which have been planted or cultivated in violation of this chapter, or of which the owners or cultivators are unknown, or which are wild growths, may be seized and summarily forfeited to the board.

(13) The failure, upon demand by a board inspector or law enforcement officer, of the person in occupancy or in control of land or premises upon which the species of plants are growing or being stored to produce an appropriate registration or proof that he or she is the holder thereof constitutes authority for the seizure and forfeiture of the plants.

(14) Upon the entry of an order of forfeiture of real property, the court shall forward a copy of the order to the assessor of the county in which the property is located. Orders for the forfeiture of real property shall be entered by the superior court, subject to court rules. Such an order shall be filed by the seizing agency in the county auditor's records in the county in which the real property is located.

(15) A landlord may assert a claim against proceeds from the sale of assets seized and forfeited under subsection (7)(b) of this section, only if:

(a) A law enforcement officer, while acting in his or her official capacity, directly caused damage to the complaining landlord's property while executing a search of a tenant's residence; and

(b) The landlord has applied any funds remaining in the tenant's deposit, to which the landlord has a right under chapter 59.18 RCW, to cover the damage directly caused by a law enforcement officer prior to asserting a claim under the provisions of this section;

(i) Only if the funds applied under (b) of this subsection are insufficient to satisfy the damage directly caused by a law

enforcement officer, may the landlord seek compensation for the damage by filing a claim against the governmental entity under whose authority the law enforcement agency operates within thirty days after the search;

(ii) Only if the governmental entity denies or fails to respond to the landlord's claim within sixty days of the date of filing, may the landlord collect damages under this subsection by filing within thirty days of denial or the expiration of the sixty-day period, whichever occurs first, a claim with the seizing law enforcement agency. The seizing law enforcement agency must notify the landlord of the status of the claim by the end of the thirty-day period. Nothing in this section requires the claim to be paid by the end of the sixty-day or thirty-day period.

(c) For any claim filed under (b) of this subsection, the law enforcement agency shall pay the claim unless the agency provides substantial proof that the landlord either:

(i) Knew or consented to actions of the tenant in violation of this chapter or chapter 69.41 or 69.52 RCW; or

(ii) Failed to respond to a notification of the illegal activity, provided by a law enforcement agency under RCW 59.18.075, within seven days of receipt of notification of the illegal activity.

(16) The landlord's claim for damages under subsection (15) of this section may not include a claim for loss of business and is limited to:

(a) Damage to tangible property and clean-up costs;

(b) The lesser of the cost of repair or fair market value of the damage directly caused by a law enforcement officer;

(c) The proceeds from the sale of the specific tenant's property seized and forfeited under subsection (7)(b) of this section; and

(d) The proceeds available after the seizing law enforcement agency satisfies any bona fide security interest in the tenant's property and costs related to sale of the tenant's property as provided by subsection (9)(b) of this section.

(17) Subsections (15) and (16) of this section do not limit any other rights a landlord may have against a tenant to collect for damages. However, if a law enforcement agency satisfies a landlord's claim under subsection (15) of this section, the rights the landlord has against the tenant for damages directly caused by a law enforcement officer under the terms of the landlord and tenant's contract are subrogated to the law enforcement agency. [2009 c 479 § 46; 2009 c 364 § 1; 2008 c 6 § 631; 2003 c 53 § 348; 2001 c 168 § 1; 1993 c 487 § 1; 1992 c 211 § 1. Prior: (1992 c 210 § 5 repealed by 1992 c 211 § 2); 1990 c 248 § 2; 1990 c 213 § 12; 1989 c 271 § 212; 1988 c 282 § 2; 1986 c 124 § 9; 1984 c 258 § 333; 1983 c 2 § 15; prior: 1982 c 189 § 6; 1982 c 171 § 1; prior: 1981 c 67 § 32; 1981 c 48 § 3; 1977 ex.s. c 77 § 1; 1971 ex.s. c 308 § 69.50.505.]

Reviser's note: This section was amended by 2009 c 364 § 1 and by 2009 c 479 § 46, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2009 c 479: See note following RCW 2.56.030.

Part headings not law—Severability—2008 c 6: See RCW 26.60.900 and 26.60.901.

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

Severability—2001 c 168: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2001 c 168 § 5.]

Effective date—1990 c 213 §§ 2 and 12: See note following RCW 64.44.010.

Severability—1990 c 213: See RCW 64.44.901.

Findings—1989 c 271: "The legislature finds that: Drug offenses and crimes resulting from illegal drug use are destructive to society; the nature of drug trafficking results in many property crimes and crimes of violence; state and local governmental agencies incur immense expenses in the investigation, prosecution, adjudication, incarceration, and treatment of drug-related offenders and the compensation of their victims; drug-related offenses are difficult to eradicate because of the profits derived from the criminal activities, which can be invested in legitimate assets and later used for further criminal activities; and the forfeiture of real assets where a substantial nexus exists between the commercial production or sale of the substances and the real property will provide a significant deterrent to crime by removing the profit incentive of drug trafficking, and will provide a revenue source that will partially defray the large costs incurred by government as a result of these crimes. The legislature recognizes that seizure of real property is a very powerful tool and should not be applied in cases in which a manifest injustice would occur as a result of forfeiture of an innocent spouse's community property interest." [1989 c 271 § 211.]

Severability—1989 c 271: See note following RCW 9.94A.510.

Severability—1988 c 282: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1988 c 282 § 3.]

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

Intent—1984 c 258: See note following RCW 3.34.130.

Severability—1983 c 2: See note following RCW 18.71.030.

Effective date—1982 c 189: See note following RCW 34.12.020.

Severability—Effective date—1982 c 171: See RCW 69.52.900 and 69.52.901.

Severability—1981 c 48: See note following RCW 69.50.102.

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

Title 70

PUBLIC HEALTH AND SAFETY

Chapters

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Chapter 70.01 RCW
GENERAL PROVISIONS

Sections

70.01.030 Health care fees and charges—Estimate.

70.01.030 Health care fees and charges—Estimate. (1) Health care providers licensed under Title 18 RCW and health care facilities licensed under Title 70 RCW shall provide the following to a patient upon request:

(a) An estimate of fees and charges related to a specific service, visit, or stay; and

(b) Information regarding other types of fees or charges a patient may receive in conjunction with their visit to the provider or facility. Hospitals licensed under chapter 70.41 RCW may fulfill this requirement by providing a statement and contact information as described in RCW 70.41.400.

(2) Providers and facilities listed in subsection (1) of this section may, after disclosing estimated charges and fees to a patient, refer the patient to the patient's insurer, if applicable, for specific information on the insurer's charges and fees, any cost-sharing responsibilities required of the patient, and the network status of ancillary providers who may or may not share the same network status as the provider or facility.

(3) Except for hospitals licensed under chapter 70.41 RCW, providers and facilities listed in subsection (1) of this section shall post a sign in patient registration areas containing at least the following language: "Information about the estimated charges of your health services is available upon request. Please do not hesitate to ask for information." [2009 c 529 § 1.]

Chapter 70.02 RCW
MEDICAL RECORDS—HEALTH CARE INFORMATION ACCESS AND DISCLOSURE

Sections

70.02.905 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. *(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*

70.02.905 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. ***(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 149.]

Chapter 70.05 RCW
LOCAL HEALTH DEPARTMENTS, BOARDS, OFFICERS—REGULATIONS

Sections

70.05.125 County public health account—Distribution to local public health jurisdictions.
70.05.170 Child mortality review.

70.05.125 County public health account—Distribution to local public health jurisdictions. (1) The county public health account is created in the state treasury. Funds deposited in the county public health account shall be distributed by the state treasurer to each local public health jurisdiction based upon amounts certified to it by the department of community, trade, and economic development in consultation with the Washington state association of counties. The account shall include funds distributed under RCW 82.14.200(8) and such funds as are appropriated to the account from the state general fund, the public health services account under RCW 43.72.902, and such other funds as the legislature may appropriate to it.

(2)(a) The director of the department of community, trade, and economic development shall certify the amounts to be distributed to each local public health jurisdiction using 1995 as the base year of actual city contributions to local public health.

(b) Only if funds are available and in an amount no greater than available funds under RCW 82.14.200(8), the department of community, trade, and economic development shall adjust the amount certified under (a) of this subsection to compensate for any annexation of an area with fifty thousand residents or more to any city as a result of a petition during calendar year 1996 or 1997, or for any city that became newly incorporated as a result of an election during calendar year 1994 or 1995. The amount to be adjusted shall be equal to the amount which otherwise would have been lost to the health jurisdiction due to the annexation or incorporation as calculated using the jurisdiction's 1995 funding formula.

(c) The county treasurer shall certify the actual 1995 city contribution to the department. Funds in excess of the base shall be distributed proportionately among the health jurisdictions based on incorporated population figures as last determined by the office of financial management.

(3) Moneys distributed under this section shall be expended exclusively for local public health purposes. [2009 c 479 § 48; 1998 c 266 § 1; 1997 c 333 § 1; 1995 1st sp.s. c 15 § 1.]

Effective date—2009 c 479: See note following RCW 2.56.030.

Effective date—1998 c 266: "This act takes effect July 1, 1998." [1998 c 266 § 2.]

Effective date—1997 c 333: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1997." [1997 c 333 § 3.]

Effective date—1995 1st sp.s. c 15: "This act shall take effect January 1, 1996." [1995 1st sp.s. c 15 § 3.]

70.05.170 Child mortality review. (1)(a) The legislature finds that the mortality rate in Washington state among infants and children less than eighteen years of age is unacceptably high, and that such mortality may be preventable. The legislature further finds that, through the performance of child mortality reviews, preventable causes of child mortality can be identified and addressed, thereby reducing the infant and child mortality in Washington state.

(b) It is the intent of the legislature to encourage the performance of child death reviews by local health departments by providing necessary legal protections to the families of children whose deaths are studied, local health department officials and employees, and health care professionals participating in child mortality review committee activities.

(2) As used in this section, "child mortality review" means a process authorized by a local health department as such department is defined in RCW 70.05.010 for examining factors that contribute to deaths of children less than eighteen years of age. The process may include a systematic review of medical, clinical, and hospital records; home interviews of parents and caretakers of children who have died; analysis of individual case information; and review of this information by a team of professionals in order to identify modifiable medical, socioeconomic, public health, behavioral, administrative, educational, and environmental factors associated with each death.

(3) Local health departments are authorized to conduct child mortality reviews. In conducting such reviews, the following provisions shall apply:

(a) All medical records, reports, and statements procured by, furnished to, or maintained by a local health department pursuant to chapter 70.02 RCW for purposes of a child mortality review are confidential insofar as the identity of an individual child and his or her adoptive or natural parents is concerned. Such records may be used solely by local health departments for the purposes of the review. This section does not prevent a local health department from publishing statistical compilations and reports related to the child mortality review, if such compilations and reports do not identify individual cases and sources of information.

(b) Any records or documents supplied or maintained for the purposes of a child mortality review are not subject to discovery or subpoena in any administrative, civil, or criminal proceeding related to the death of a child reviewed. This provision shall not restrict or limit the discovery or subpoena from a health care provider of records or documents maintained by such health care provider in the ordinary course of business, whether or not such records or documents may have been supplied to a local health department pursuant to this section.

(c) Any summaries or analyses of records, documents, or records of interviews prepared exclusively for purposes of a child mortality review are not subject to discovery, subpoena, or introduction into evidence in any administrative, civil, or criminal proceeding related to the death of a child reviewed.

(d) No local health department official or employee, and no members of technical committees established to perform case reviews of selected child deaths may be examined in any administrative, civil, or criminal proceeding as to the existence or contents of documents assembled, prepared, or maintained for purposes of a child mortality review.

(e) This section shall not be construed to prohibit or restrict any person from reporting suspected child abuse or neglect under chapter 26.44 RCW nor to limit access to or use of any records, documents, information, or testimony in any civil or criminal action arising out of any report made pursuant to chapter 26.44 RCW.

(4) The department shall assist local health departments to collect the reports of any child mortality reviews conducted by local health departments and assist with entering the reports into a database to the extent that the data is not protected under subsection (3) of this section. Notwithstanding subsection (3) of this section, the department shall respond to any requests for data from the database to the extent permitted for health care information under chapter 70.02 RCW. In addition, the department shall provide technical assistance to local health departments and child death review coordinators conducting child mortality reviews and encourage communication among child death review teams. The department shall conduct these activities using only federal and private funding. [2009 c 134 § 1; 1993 c 41 § 1; 1992 c 179 § 1.]

Chapter 70.14 RCW
HEALTH CARE SERVICES PURCHASED BY STATE AGENCIES

Sections

70.14.060 Prescription drug purchasing consortium—Participation—Exceptions—Rules.

70.14.155 Streamlined health care administration—Agency participation.

70.14.060 Prescription drug purchasing consortium—Participation—Exceptions—Rules. (1) The administrator of the state health care authority shall, directly or by contract, adopt policies necessary for establishment of a prescription drug purchasing consortium. The consortium's purchasing activities shall be based upon the evidence-based prescription drug program established under RCW 70.14.050. State purchased health care programs as defined in RCW 41.05.011 shall purchase prescription drugs through the consortium for those prescription drugs that are purchased directly by the state and those that are purchased through reimbursement of pharmacies, unless exempted under this section. The administrator shall not require any supplemental rebate offered to the department of social and health services by a pharmaceutical manufacturer for prescription drugs purchased for medical assistance program clients under chapter 74.09 RCW be extended to any other state purchased health care program, or to any other individuals or entities participating in the consortium. The administrator shall explore joint purchasing opportunities with other states.

(2) Participation in the purchasing consortium shall be offered as an option beginning January 1, 2006. Participation in the consortium is purely voluntary for units of local government, private entities, labor organizations, and for individuals who lack or are underinsured for prescription drug coverage. The administrator may set reasonable fees, including enrollment fees, to cover administrative costs attributable to participation in the prescription drug consortium.

(3) This section does not apply to state purchased health care services that are purchased from or through health carriers as defined in RCW 48.43.005, or group model health maintenance organizations that are accredited by the national committee for quality assurance.

(4) The state health care authority is authorized to adopt rules implementing chapter 129, Laws of 2005.

(5) State purchased health care programs are exempt from the requirements of this section if they can demonstrate to the administrator that, as a result of the availability of federal programs or other purchasing arrangements, their other purchasing mechanisms will result in greater discounts and aggregate cost savings than would be realized through participation in the consortium. [2009 c 560 § 13; 2005 c 129 § 1.]

Intent—Effective date—Disposition of property and funds—Assignment/delegation of contractual rights or duties—2009 c 560: See notes following RCW 18.06.080.

Performance audit—2005 c 129 § 1: "By December 1, 2008, the joint legislative audit and review committee shall conduct a performance audit on the operation of the consortium created in section 1 of this act. The audit shall review the operations and outcomes associated with the implementation of this consortium and identify the net savings, if any, to the members of the consortium, the percentage of targeted populations participating, and changes in the health outcomes of participants." [2005 c 129 § 3.]

Severability—2005 c 129: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2005 c 129 § 4.]

Conflict with federal requirements—2005 c 129: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state." [2005 c 129 § 5.]

70.14.155 Streamlined health care administration—Agency participation. The following state agencies are directed to cooperate with the insurance commissioner and, within funds appropriated specifically for this purpose, adopt the processes, guidelines, and standards to streamline health care administration pursuant to chapter 48.165 RCW: The department of social and health services, the health care authority, and, to the extent permissible under Title 51 RCW, the department of labor and industries. [2009 c 298 § 3.]

Chapter 70.24 RCW
CONTROL AND TREATMENT OF SEXUALLY TRANSMITTED DISEASES

Sections

70.24.901 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. *(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*

70.24.901 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. ***(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 150.]

Chapter 70.38 RCW
HEALTH PLANNING AND DEVELOPMENT

Sections

70.38.105 Health services and facilities requiring certificate of need—Fees.
70.38.111 Certificates of need—Exemptions.

70.38.105 Health services and facilities requiring certificate of need—Fees. (1) The department is authorized and directed to implement the certificate of need program in this state pursuant to the provisions of this chapter.

(2) There shall be a state certificate of need program which is administered consistent with the requirements of federal law as necessary to the receipt of federal funds by the state.

(3) No person shall engage in any undertaking which is subject to certificate of need review under subsection (4) of

this section without first having received from the department either a certificate of need or an exception granted in accordance with this chapter.

(4) The following shall be subject to certificate of need review under this chapter:

(a) The construction, development, or other establishment of a new health care facility including, but not limited to, a hospital constructed, developed, or established by a health maintenance organization or by a combination of health maintenance organizations except as provided in subsection (7)(a) of this section;

(b) The sale, purchase, or lease of part or all of any existing hospital as defined in RCW 70.38.025 including, but not limited to, a hospital sold, purchased, or leased by a health maintenance organization or by a combination of health maintenance organizations except as provided in subsection (7)(b) of this section;

(c) Any capital expenditure for the construction, renovation, or alteration of a nursing home which substantially changes the services of the facility after January 1, 1981, provided that the substantial changes in services are specified by the department in rule;

(d) Any capital expenditure for the construction, renovation, or alteration of a nursing home which exceeds the expenditure minimum as defined by RCW 70.38.025. However, a capital expenditure which is not subject to certificate of need review under (a), (b), (c), or (e) of this subsection and which is solely for any one or more of the following is not subject to certificate of need review:

(i) Communications and parking facilities;

(ii) Mechanical, electrical, ventilation, heating, and air conditioning systems;

(iii) Energy conservation systems;

(iv) Repairs to, or the correction of, deficiencies in existing physical plant facilities which are necessary to maintain state licensure, however, other additional repairs, remodeling, or replacement projects that are not related to one or more deficiency citations and are not necessary to maintain state licensure are not exempt from certificate of need review except as otherwise permitted by (d)(vi) of this subsection or RCW 70.38.115(13);

(v) Acquisition of equipment, including data processing equipment, which is not or will not be used in the direct provision of health services;

(vi) Construction or renovation at an existing nursing home which involves physical plant facilities, including administrative, dining areas, kitchen, laundry, therapy areas, and support facilities, by an existing licensee who has operated the beds for at least one year;

(vii) Acquisition of land; and

(viii) Refinancing of existing debt;

(e) A change in bed capacity of a health care facility which increases the total number of licensed beds or redistributes beds among acute care, nursing home care, and boarding home care if the bed redistribution is to be effective for a period in excess of six months, or a change in bed capacity of a rural health care facility licensed under RCW 70.175.100 that increases the total number of nursing home beds or redistributes beds from acute care or boarding home care to nursing home care if the bed redistribution is to be effective for a period in excess of six months. A health care facility certified as a critical access hospital under 42 U.S.C. 1395i-4 may increase its total number of licensed beds to the total number of beds permitted under 42 U.S.C. 1395i-4 for acute care and may redistribute beds permitted under 42 U.S.C. 1395i-4 among acute care and nursing home care without being subject to certificate of need review. If there is a nursing home licensed under chapter 18.51 RCW within twenty-seven miles of the critical access hospital, the critical access hospital is subject to certificate of need review except for:

(i) Critical access hospitals which had designated beds to provide nursing home care, in excess of five swing beds, prior to December 31, 2003;

(ii) Up to five swing beds; or

(iii) Up to twenty-five swing beds for critical access hospitals which do not have a nursing home licensed under chapter 18.51 RCW within the same city or town limits. Up to one-half of the additional beds designated for swing bed services under this subsection (4)(e)(iii) may be so designated before July 1, 2010, with the balance designated on or after July 1, 2010.

Critical access hospital beds not subject to certificate of need review under this subsection (4)(e) will not be counted as either acute care or nursing home care for certificate of need review purposes. If a health care facility ceases to be certified as a critical access hospital under 42 U.S.C. 1395i-4, the hospital may revert back to the type and number of licensed hospital beds as it had when it requested critical access hospital designation;

(f) Any new tertiary health services which are offered in or through a health care facility or rural health care facility licensed under RCW 70.175.100, and which were not offered on a regular basis by, in, or through such health care facility or rural health care facility within the twelve-month period prior to the time such services would be offered;

(g) Any expenditure for the construction, renovation, or alteration of a nursing home or change in nursing home services in excess of the expenditure minimum made in preparation for any undertaking under subsection (4) of this section and any arrangement or commitment made for financing such undertaking. Expenditures of preparation shall include expenditures for architectural designs, plans, working drawings, and specifications. The department may issue certificates of need permitting predevelopment expenditures, only, without authorizing any subsequent undertaking with respect to which such predevelopment expenditures are made; and

(h) Any increase in the number of dialysis stations in a kidney disease center.

(5) The department is authorized to charge fees for the review of certificate of need applications and requests for exemptions from certificate of need review. The fees shall be sufficient to cover the full cost of review and exemption, which may include the development of standards, criteria, and policies.

(6) No person may divide a project in order to avoid review requirements under any of the thresholds specified in this section.

(7)(a) The requirement that a health maintenance organization obtain a certificate of need under subsection (4)(a) of this section for the construction, development, or other establishment of a hospital does not apply to a health maintenance

organization operating a group practice that has been continuously licensed as a health maintenance organization since January 1, 2009;

(b) The requirement that a health maintenance organization obtain a certificate of need under subsection (4)(b) of this section to sell, purchase, or lease a hospital does not apply to a health maintenance organization operating a group practice that has been continuously licensed as a health maintenance organization since January 1, 2009. [2009 c 315 § 1; 2009 c 242 § 3; 2009 c 54 § 1; 2004 c 261 § 6; 1996 c 50 § 1; 1992 c 27 § 1; 1991 sp.s. c 8 § 4; 1989 1st ex.s. c 9 § 603; 1984 c 288 § 21; 1983 c 235 § 7; 1982 c 119 § 2; 1980 c 139 § 7; 1979 ex.s. c 161 § 10.]

Reviser's note: This section was amended by 2009 c 242 § 3 and by 2009 c 315 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—1991 sp.s. c 8: See note following RCW 18.51.050.

Severability—1984 c 288: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1984 c 288 § 27.]

Effective date—1980 c 139: See RCW 70.38.916.

Effective dates—1979 ex.s. c 161: See RCW 70.38.915.

70.38.111 Certificates of need—Exemptions. (1) The department shall not require a certificate of need for the offering of an inpatient tertiary health service by:

(a) A health maintenance organization or a combination of health maintenance organizations if (i) the organization or combination of organizations has, in the service area of the organization or the service areas of the organizations in the combination, an enrollment of at least fifty thousand individuals, (ii) the facility in which the service will be provided is or will be geographically located so that the service will be reasonably accessible to such enrolled individuals, and (iii) at least seventy-five percent of the patients who can reasonably be expected to receive the tertiary health service will be individuals enrolled with such organization or organizations in the combination;

(b) A health care facility if (i) the facility primarily provides or will provide inpatient health services, (ii) the facility is or will be controlled, directly or indirectly, by a health maintenance organization or a combination of health maintenance organizations which has, in the service area of the organization or service areas of the organizations in the combination, an enrollment of at least fifty thousand individuals, (iii) the facility is or will be geographically located so that the service will be reasonably accessible to such enrolled individuals, and (iv) at least seventy-five percent of the patients who can reasonably be expected to receive the tertiary health service will be individuals enrolled with such organization or organizations in the combination; or

(c) A health care facility (or portion thereof) if (i) the facility is or will be leased by a health maintenance organization or combination of health maintenance organizations which has, in the service area of the organization or the service areas of the organizations in the combination, an enrollment of at least fifty thousand individuals and, on the date the application is submitted under subsection (2) of this section, at least fifteen years remain in the term of the lease, (ii) the facility is or will be geographically located so that the service will be reasonably accessible to such enrolled individuals, and (iii) at least seventy-five percent of the patients who can reasonably be expected to receive the tertiary health service will be individuals enrolled with such organization;
if, with respect to such offering or obligation by a nursing home, the department has, upon application under subsection (2) of this section, granted an exemption from such requirement to the organization, combination of organizations, or facility.

(2) A health maintenance organization, combination of health maintenance organizations, or health care facility shall not be exempt under subsection (1) of this section from obtaining a certificate of need before offering a tertiary health service unless:

(a) It has submitted at least thirty days prior to the offering of services reviewable under RCW 70.38.105(4)(d) an application for such exemption; and

(b) The application contains such information respecting the organization, combination, or facility and the proposed offering or obligation by a nursing home as the department may require to determine if the organization or combination meets the requirements of subsection (1) of this section or the facility meets or will meet such requirements; and

(c) The department approves such application. The department shall approve or disapprove an application for exemption within thirty days of receipt of a completed application. In the case of a proposed health care facility (or portion thereof) which has not begun to provide tertiary health services on the date an application is submitted under this subsection with respect to such facility (or portion), the facility (or portion) shall meet the applicable requirements of subsection (1) of this section when the facility first provides such services. The department shall approve an application submitted under this subsection if it determines that the applicable requirements of subsection (1) of this section are met.

(3) A health care facility (or any part thereof) with respect to which an exemption was granted under subsection (1) of this section may not be sold or leased and a controlling interest in such facility or in a lease of such facility may not be acquired and a health care facility described in (1)(c) which was granted an exemption under subsection (1) of this section may not be used by any person other than the lessee described in (1)(c) unless:

(a) The department issues a certificate of need approving the sale, lease, acquisition, or use; or

(b) The department determines, upon application, that (i) the entity to which the facility is proposed to be sold or leased, which intends to acquire the controlling interest, or which intends to use the facility is a health maintenance organization or a combination of health maintenance organizations which meets the requirements of (1)(a)(i), and (ii) with respect to such facility, meets the requirements of (1)(a)(ii) or (iii) or the requirements of (1)(b)(i) and (ii).

(4) In the case of a health maintenance organization, an ambulatory care facility, or a health care facility, which ambulatory or health care facility is controlled, directly or indirectly, by a health maintenance organization or a combination of health maintenance organizations, the department may under the program apply its certificate of need requirements to the offering of inpatient tertiary health services to

the extent that such offering is not exempt under the provisions of this section or RCW 70.38.105(7).

(5)(a) The department shall not require a certificate of need for the construction, development, or other establishment of a nursing home, or the addition of beds to an existing nursing home, that is owned and operated by a continuing care retirement community that:

(i) Offers services only to contractual members;

(ii) Provides its members a contractually guaranteed range of services from independent living through skilled nursing, including some assistance with daily living activities;

(iii) Contractually assumes responsibility for the cost of services exceeding the member's financial responsibility under the contract, so that no third party, with the exception of insurance purchased by the retirement community or its members, but including the medicaid program, is liable for costs of care even if the member depletes his or her personal resources;

(iv) Has offered continuing care contracts and operated a nursing home continuously since January 1, 1988, or has obtained a certificate of need to establish a nursing home;

(v) Maintains a binding agreement with the state assuring that financial liability for services to members, including nursing home services, will not fall upon the state;

(vi) Does not operate, and has not undertaken a project that would result in a number of nursing home beds in excess of one for every four living units operated by the continuing care retirement community, exclusive of nursing home beds; and

(vii) Has obtained a professional review of pricing and long-term solvency within the prior five years which was fully disclosed to members.

(b) A continuing care retirement community shall not be exempt under this subsection from obtaining a certificate of need unless:

(i) It has submitted an application for exemption at least thirty days prior to commencing construction of, is submitting an application for the licensure of, or is commencing operation of a nursing home, whichever comes first; and

(ii) The application documents to the department that the continuing care retirement community qualifies for exemption.

(c) The sale, lease, acquisition, or use of part or all of a continuing care retirement community nursing home that qualifies for exemption under this subsection shall require prior certificate of need approval to qualify for licensure as a nursing home unless the department determines such sale, lease, acquisition, or use is by a continuing care retirement community that meets the conditions of (a) of this subsection.

(6) A rural hospital, as defined by the department, reducing the number of licensed beds to become a rural primary care hospital under the provisions of Part A Title XVIII of the Social Security Act Section 1820, 42 U.S.C., 1395c et seq. may, within three years of the reduction of beds licensed under chapter 70.41 RCW, increase the number of licensed beds to no more than the previously licensed number without being subject to the provisions of this chapter.

(7) A rural health care facility licensed under RCW 70.175.100 formerly licensed as a hospital under chapter 70.41 RCW may, within three years of the effective date of the rural health care facility license, apply to the department for a hospital license and not be subject to the requirements of RCW 70.38.105(4)(a) as the construction, development, or other establishment of a new hospital, provided there is no increase in the number of beds previously licensed under chapter 70.41 RCW and there is no redistribution in the number of beds used for acute care or long-term care, the rural health care facility has been in continuous operation, and the rural health care facility has not been purchased or leased.

(8)(a) A nursing home that voluntarily reduces the number of its licensed beds to provide assisted living, licensed boarding home care, adult day care, adult day health, respite care, hospice, outpatient therapy services, congregate meals, home health, or senior wellness clinic, or to reduce to one or two the number of beds per room or to otherwise enhance the quality of life for residents in the nursing home, may convert the original facility or portion of the facility back, and thereby increase the number of nursing home beds to no more than the previously licensed number of nursing home beds without obtaining a certificate of need under this chapter, provided the facility has been in continuous operation and has not been purchased or leased. Any conversion to the original licensed bed capacity, or to any portion thereof, shall comply with the same life and safety code requirements as existed at the time the nursing home voluntarily reduced its licensed beds; unless waivers from such requirements were issued, in which case the converted beds shall reflect the conditions or standards that then existed pursuant to the approved waivers.

(b) To convert beds back to nursing home beds under this subsection, the nursing home must:

(i) Give notice of its intent to preserve conversion options to the department of health no later than thirty days after the effective date of the license reduction; and

(ii) Give notice to the department of health and to the department of social and health services of the intent to convert beds back. If construction is required for the conversion of beds back, the notice of intent to convert beds back must be given, at a minimum, one year prior to the effective date of license modification reflecting the restored beds; otherwise, the notice must be given a minimum of ninety days prior to the effective date of license modification reflecting the restored beds. Prior to any license modification to convert beds back to nursing home beds under this section, the licensee must demonstrate that the nursing home meets the certificate of need exemption requirements of this section.

The term "construction," as used in (b)(ii) of this subsection, is limited to those projects that are expected to equal or exceed the expenditure minimum amount, as determined under this chapter.

(c) Conversion of beds back under this subsection must be completed no later than four years after the effective date of the license reduction. However, for good cause shown, the four-year period for conversion may be extended by the department of health for one additional four-year period.

(d) Nursing home beds that have been voluntarily reduced under this section shall be counted as available nursing home beds for the purpose of evaluating need under RCW 70.38.115(2) (a) and (k) so long as the facility retains the ability to convert them back to nursing home use under the terms of this section.

(e) When a building owner has secured an interest in the nursing home beds, which are intended to be voluntarily reduced by the licensee under (a) of this subsection, the applicant shall provide the department with a written statement indicating the building owner's approval of the bed reduction.

(9)(a) The department shall not require a certificate of need for a hospice agency if:

(i) The hospice agency is designed to serve the unique religious or cultural needs of a religious group or an ethnic minority and commits to furnishing hospice services in a manner specifically aimed at meeting the unique religious or cultural needs of the religious group or ethnic minority;

(ii) The hospice agency is operated by an organization that:

(A) Operates a facility, or group of facilities, that offers a comprehensive continuum of long-term care services, including, at a minimum, a licensed, medicare-certified nursing home, assisted living, independent living, day health, and various community-based support services, designed to meet the unique social, cultural, and religious needs of a specific cultural and ethnic minority group;

(B) Has operated the facility or group of facilities for at least ten continuous years prior to the establishment of the hospice agency;

(iii) The hospice agency commits to coordinating with existing hospice programs in its community when appropriate;

(iv) The hospice agency has a census of no more than forty patients;

(v) The hospice agency commits to obtaining and maintaining medicare certification;

(vi) The hospice agency only serves patients located in the same county as the majority of the long-term care services offered by the organization that operates the agency; and

(vii) The hospice agency is not sold or transferred to another agency.

(b) The department shall include the patient census for an agency exempted under this subsection (9) in its calculations for future certificate of need applications. [2009 c 315 § 2; 2009 c 89 § 1; 1997 c 210 § 1; 1995 1st sp.s. c 18 § 71; 1993 c 508 § 5; 1992 c 27 § 2; 1991 c 158 § 2; 1989 1st ex.s. c 9 § 604; 1982 c 119 § 3; 1980 c 139 § 9.]

Reviser's note: This section was amended by 2009 c 89 § 1 and by 2009 c 315 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

Section captions—Severability—Effective date—1993 c 508: See RCW 74.39A.900 through 74.39A.903.

Chapter 70.41 RCW
HOSPITAL LICENSING AND REGULATION

Sections

70.41.120 Inspection of hospitals—Final report—Alterations or additions, new facilities—Coordination with state and local agencies—Notice of inspection.
70.41.122 Exemption from RCW 70.41.120 for hospitals accredited by other entities.
70.41.430 Licensed hospitals must adopt a policy regarding methicillin-resistant staphylococcus aureus (MRSA)—Elements.
70.41.440 Duty to report violent injuries—Preservation of evidence—Immunity—Privilege.
70.41.450 Estimated charges of hospital services—Notice.

70.41.120 Inspection of hospitals—Final report—Alterations or additions, new facilities—Coordination with state and local agencies—Notice of inspection. (1) The department shall make or cause to be made an unannounced inspection of all hospitals on average at least every eighteen months. Every inspection of a hospital may include an inspection of every part of the premises. The department may make an examination of all phases of the hospital operation necessary to determine compliance with the law and the standards, rules and regulations adopted thereunder.

(2) The department shall not issue its final report regarding an unannounced inspection by the department until: (a) The hospital is given at least two weeks following the inspection to provide any information or documentation requested by the department during the unannounced inspection that was not available at the time of the request; and (b) at least one person from the department conducting the inspection meets personally with the chief administrator or executive officer of the hospital following the inspection or the chief administrator or executive officer declines such a meeting.

(3) Any licensee or applicant desiring to make alterations or additions to its facilities or to construct new facilities shall, before commencing such alteration, addition or new construction, comply with the regulations prescribed by the department.

(4) No hospital licensed pursuant to the provisions of this chapter shall be required to be inspected or licensed under other state laws or rules and regulations promulgated thereunder, or local ordinances, relative to hotels, restaurants, lodging houses, boarding houses, places of refreshment, nursing homes, maternity homes, or psychiatric hospitals.

(5) To avoid unnecessary duplication in inspections, the department shall coordinate with the department of social and health services, the office of the state fire marshal, and local agencies when inspecting facilities over which each agency has jurisdiction, the facilities including but not necessarily being limited to hospitals with both acute care and skilled nursing or psychiatric nursing functions. The department shall notify the office of the state fire marshal and the relevant local agency at least four weeks prior to any inspection conducted under this section and invite their attendance at the inspection, and shall provide a copy of its inspection report to each agency upon completion. [2009 c 242 § 1; 2005 c 447 § 1; 2004 c 261 § 4; 1995 c 282 § 4; 1985 c 213 § 21; 1955 c 267 § 12.]

Savings—Effective date—1985 c 213: See notes following RCW 43.20.050.

70.41.122 Exemption from RCW 70.41.120 for hospitals accredited by other entities. Surveys conducted on hospitals by the joint commission on the accreditation of health care organizations, the American osteopathic association, or Det Norske Veritas shall be deemed equivalent to a department survey for purposes of meeting the requirements for the survey specified in RCW 70.41.120 if the department determines that the applicable survey standards are substantially equivalent to its own.

(1) Hospitals so surveyed shall provide to the department within thirty days of learning the result of a survey documentary evidence that the hospital has been certified as a result of a survey and the date of the survey.

(2) Hospitals shall make available to department surveyors the written reports of such surveys during department surveys, upon request. [2009 c 242 § 2; 2005 c 447 § 2; 1999 c 41 § 1; 1995 c 282 § 6.]

70.41.430 Licensed hospitals must adopt a policy regarding methicillin-resistant staphylococcus aureus (MRSA)—Elements. (1) Each hospital licensed under this chapter shall, by January 1, 2010, adopt a policy regarding methicillin-resistant staphylococcus aureus. The policy shall, at a minimum, contain the following elements:

(a) A requirement to test any patient for methicillin-resistant staphylococcus aureus who is a member of a patient population identified as appropriate to test based on the hospital's risk assessment for methicillin-resistant staphylococcus aureus;

(b) A requirement that a patient in the hospital's adult or pediatric, but not neonatal, intensive care unit be tested for methicillin-resistant staphylococcus aureus within twenty-four hours of admission unless the patient has been previously tested during that hospital stay or has a known history of methicillin-resistant staphylococcus aureus;

(c) Appropriate procedures to help prevent patients who test positive for methicillin-resistant staphylococcus aureus from transmitting to other patients. For purposes of this subsection, "appropriate procedures" include, but are not limited to, isolation or cohorting of patients colonized or infected with methicillin-resistant staphylococcus aureus. In a hospital where patients, whose methicillin-resistant staphylococcus aureus status is either unknown or uncolonized, may be roomed with colonized or infected patients, patients must be notified they may be roomed with patients who have tested positive for methicillin-resistant staphylococcus aureus; and

(d) A requirement that every patient who has a methicillin-resistant staphylococcus aureus infection receive oral and written instructions regarding aftercare and precautions to prevent the spread of the infection to others.

(2) A hospital that has identified a hospitalized patient who has a diagnosis of methicillin-resistant staphylococcus aureus shall report the infection to the department using the department's comprehensive hospital abstract reporting system. When making its report, the hospital shall use codes used by the United States centers for medicare and medicaid services, when available. [2009 c 244 § 1.]

70.41.440 Duty to report violent injuries—Preservation of evidence—Immunity—Privilege. (1) A hospital shall report to a local law enforcement authority as soon as reasonably possible, taking into consideration a patient's emergency care needs, when the hospital provides treatment for a bullet wound, gunshot wound, or stab wound to a patient who is unconscious. A hospital shall establish a written policy to identify the person or persons responsible for making the report.

(2) The report required under subsection (1) of this section must include the following information, if known:

(a) The name, residence, sex, and age of the patient;

(b) Whether the patient has received a bullet wound, gunshot wound, or stab wound; and

(c) The name of the health care provider providing treatment for the bullet wound, gunshot wound, or stab wound.

(3) Nothing in this section shall limit a person's duty to report under RCW 26.44.030 or 74.34.035.

(4) Any bullets, clothing, or other foreign objects that are removed from a patient for whom a hospital is required to make a report pursuant to subsection (1) of this section shall be preserved and kept in custody in such a way that the identity and integrity thereof are reasonably maintained until the bullets, clothing, or other foreign objects are taken into possession by a law enforcement authority or the hospital's normal period for retention of such items expires, whichever occurs first.

(5) Any hospital or person who in good faith, and without gross negligence or willful or wanton misconduct, makes a report required by this section, cooperates in an investigation or criminal or judicial proceeding related to such report, or maintains bullets, clothing, or other foreign objects, or provides such items to a law enforcement authority as described in subsection (4) of this section, is immune from civil or criminal liability or professional licensure action arising out of or related to the report and its contents or the absence of information in the report, cooperation in an investigation or criminal or judicial proceeding, and the maintenance or provision to a law enforcement authority of bullets, clothing, or other foreign objects under subsection (4) of this section.

(6) The physician-patient privilege described in RCW 5.60.060(4), the registered nurse-patient privilege described in RCW 5.62.020, and any other health care provider-patient privilege created or recognized by law are not a basis for excluding as evidence in any criminal proceeding any report, or information contained in a report made under this section.

(7) All reporting, preservation, or other requirements of this section are secondary to patient care needs and may be delayed or compromised without penalty to the hospital or person required to fulfill the requirements of this section. [2009 c 359 § 2.]

70.41.450 Estimated charges of hospital services—Notice. Hospitals licensed under this chapter shall post a sign in patient registration areas containing at least the following language: "Information about the estimated charges of your hospital services is available upon request. Please do not hesitate to ask for information." [2009 c 529 § 2.]

Chapter 70.44 RCW
PUBLIC HOSPITAL DISTRICTS

Sections

70.44.140 Contracts for material and work—Call for bids—Alternative procedures—Exemptions.

70.44.140 Contracts for material and work—Call for bids—Alternative procedures—Exemptions. (1) All materials purchased and work ordered, the estimated cost of which is in excess of seventy-five thousand dollars, shall be by contract. Before awarding any such contract, the commis-

sion shall publish a notice at least thirteen days before the last date upon which bids will be received, inviting sealed proposals for such work. The plans and specifications must at the time of the publication of such notice be on file at the office of the public hospital district, subject to public inspection: PROVIDED, HOWEVER, That the commission may at the same time, and as part of the same notice, invite tenders for the work or materials upon plans and specifications to be submitted by bidders. The notice shall state generally the work to be done, and shall call for proposals for doing the same, to be sealed and filed with the commission on or before the day and hour named therein. Each bid shall be accompanied by bid proposal security in the form of a certified check, cashier's check, postal money order, or surety bond made payable to the order of the commission, for a sum not less than five percent of the amount of the bid, and no bid shall be considered unless accompanied by such bid proposal security. At the time and place named, such bids shall be publicly opened and read, and the commission shall proceed to canvass the bids, and may let such contract to the lowest responsible bidder upon plans and specifications on file, or to the best bidder submitting his or her own plans and specifications: PROVIDED, HOWEVER, That no contract shall be let in excess of the estimated cost of the materials or work, or if, in the opinion of the commission, all bids are unsatisfactory, they may reject all of them and readvertise, and in such case all bid proposal security shall be returned to the bidders. If the contract is let, then all bid proposal security shall be returned to the bidders, except that of the successful bidder, which is retained until a contract shall be entered into for the purchase of such materials for doing such work, and a bond to perform such work furnished, with sureties satisfactory to the commission, in an amount to be fixed by the commission, not less than twenty-five percent of contract price in any case, between the bidder and commission, in accordance with the bid. If such bidder fails to enter into the contract in accordance with the bid and furnish such bond within ten days from the date at which the bidder is notified that he or she is the successful bidder, the bid proposal security and the amount thereof shall be forfeited to the public hospital district. A low bidder who claims error and fails to enter into a contract is prohibited from bidding on the same project if a second or subsequent call for bids is made for the project.

(2) As an alternative to the requirements of subsection (1) of this section, a public hospital district may let contracts using the small works roster process under RCW 39.04.155.

(3) Any purchases with an estimated cost of up to fifteen thousand dollars may be made using the process provided in RCW 39.04.190.

(4) The commission may waive the competitive bidding requirements of this section pursuant to RCW 39.04.280 if an exemption contained within that section applies to the purchase or public work. [2009 c 229 § 12; 2002 c 106 § 1; 2000 c 138 § 213; 1999 c 99 § 1; 1998 c 278 § 9; 1996 c 18 § 15; 1993 c 198 § 22; 1965 c 83 § 1; 1945 c 264 § 17; Rem. Supp. 1945 § 6090-46.]

Purpose—Part headings not law—2000 c 138: See notes following RCW 39.04.155.

Contractor's bond: Chapter 39.08 RCW.

Lien on public works, retained percentage of contractor's earnings: Chapter 60.28 RCW.

Chapter 70.47 RCW
BASIC HEALTH PLAN— HEALTH CARE ACCESS ACT

Sections

70.47.010 Legislative findings—Purpose—Administrator and department of social and health services to coordinate eligibility.
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70.47.902 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. *(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.) (Effective January 1, 2014.)*

70.47.010 Legislative findings—Purpose—Administrator and department of social and health services to coordinate eligibility. (1)(a) The legislature finds that limitations on access to health care services for enrollees in the state, such as in rural and underserved areas, are particularly challenging for the basic health plan. Statutory restrictions have reduced the options available to the administrator to address the access needs of basic health plan enrollees. It is the intent of the legislature to authorize the administrator to develop alternative purchasing strategies to ensure access to basic health plan enrollees in all areas of the state, including: (i) The use of differential rating for managed health care systems based on geographic differences in costs; and (ii) limited use of self-insurance in areas where adequate access cannot be assured through other options.

(b) In developing alternative purchasing strategies to address health care access needs, the administrator shall consult with interested persons including health carriers, health care providers, and health facilities, and with other appropriate state agencies including the office of the insurance commissioner and the office of community and rural health. In pursuing such alternatives, the administrator shall continue to give priority to prepaid managed care as the preferred method of assuring access to basic health plan enrollees followed, in priority order, by preferred providers, fee for service, and self-funding.

(2) The legislature further finds that:

(a) A significant percentage of the population of this state does not have reasonably available insurance or other coverage of the costs of necessary basic health care services;

(b) This lack of basic health care coverage is detrimental to the health of the individuals lacking coverage and to the public welfare, and results in substantial expenditures for emergency and remedial health care, often at the expense of health care providers, health care facilities, and all purchasers of health care, including the state; and

(c) The use of managed health care systems has significant potential to reduce the growth of health care costs incurred by the people of this state generally, and by low-income pregnant women, and at-risk children and adolescents who need greater access to managed health care.

(3) The purpose of this chapter is to provide or make more readily available necessary basic health care services in

an appropriate setting to working persons and others who lack coverage, at a cost to these persons that does not create barriers to the utilization of necessary health care services. To that end, this chapter establishes a program to be made available to those residents not eligible for medicare who share in a portion of the cost or who pay the full cost of receiving basic health care services from a managed health care system.

(4) It is not the intent of this chapter to provide health care services for those persons who are presently covered through private employer-based health plans, nor to replace employer-based health plans. However, the legislature recognizes that cost-effective and affordable health plans may not always be available to small business employers. Further, it is the intent of the legislature to expand, wherever possible, the availability of private health care coverage and to discourage the decline of employer-based coverage.

(5)(a) It is the purpose of this chapter to acknowledge the initial success of this program that has (i) assisted thousands of families in their search for affordable health care; (ii) demonstrated that low-income, uninsured families are willing to pay for their own health care coverage to the extent of their ability to pay; and (iii) proved that local health care providers are willing to enter into a public-private partnership as a managed care system.

(b) As a consequence, the legislature intends to extend an option to enroll to certain citizens above two hundred percent of the federal poverty guidelines within the state who reside in communities where the plan is operational and who collectively or individually wish to exercise the opportunity to purchase health care coverage through the basic health plan if the purchase is done at no cost to the state. It is also the intent of the legislature to allow employers and other financial sponsors to financially assist such individuals to purchase health care through the program so long as such purchase does not result in a lower standard of coverage for employees.

(c) The legislature intends that, to the extent of available funds, the program be available throughout Washington state to subsidized and nonsubsidized enrollees. It is also the intent of the legislature to enroll subsidized enrollees first, to the maximum extent feasible.

(d) The legislature directs that the basic health plan administrator identify enrollees who are likely to be eligible for medical assistance and assist these individuals in applying for and receiving medical assistance. The administrator and the department of social and health services shall implement a seamless system to coordinate eligibility determinations and benefit coverage for enrollees of the basic health plan and medical assistance recipients. Enrollees receiving medical assistance are not eligible for the Washington basic health plan. [2009 c 568 § 1; 2000 c 79 § 42; 1993 c 492 § 208; 1987 1st ex.s. c 5 § 3.]

Effective date—Severability—2000 c 79: See notes following RCW 48.04.010.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

70.47.015 Enrollment—Findings—Intent—Enrollee premium share—Expedited application and enrollment process—Commission for insurance producers.

(1) The legislature finds that the basic health plan has been an effective program in providing health coverage for uninsured residents. Further, since 1993, substantial amounts of public funds have been allocated for subsidized basic health plan enrollment.

(2) Effective January 1, 1996, basic health plan enrollees whose income is less than one hundred twenty-five percent of the federal poverty level shall pay at least a ten-dollar premium share.

(3) No later than July 1, 1996, the administrator shall implement procedures whereby hospitals licensed under chapters 70.41 and 71.12 RCW, health carrier, rural health care facilities regulated under chapter 70.175 RCW, and community and migrant health centers funded under RCW 41.05.220, may expeditiously assist patients and their families in applying for basic health plan or medical assistance coverage, and in submitting such applications directly to the health care authority or the department of social and health services. The health care authority and the department of social and health services shall make every effort to simplify and expedite the application and enrollment process.

(4) No later than July 1, 1996, the administrator shall implement procedures whereby disability insurance producers, licensed under chapter 48.17 RCW, may expeditiously assist patients and their families in applying for basic health plan or medical assistance coverage, and in submitting such applications directly to the health care authority or the department of social and health services. Insurance producers may receive a commission for each individual sale of the basic health plan to anyone not signed up within the previous five years and a commission for each group sale of the basic health plan, if funding for this purpose is provided in a specific appropriation to the health care authority. No commission shall be provided upon a renewal. Commissions shall be determined based on the estimated annual cost of the basic health plan, however, commissions shall not result in a reduction in the premium amount paid to health carriers. For purposes of this section "health carrier" is as defined in RCW 48.43.005. The administrator may establish: (a) Minimum educational requirements that must be completed by the insurance producers; (b) an appointment process for insurance producers marketing the basic health plan; or (c) standards for revocation of the appointment of an insurance producer to submit applications for cause, including untrustworthy or incompetent conduct or harm to the public. The health care authority and the department of social and health services shall make every effort to simplify and expedite the application and enrollment process. [2009 c 479 § 49; 2008 c 217 § 99; 1997 c 337 § 1; 1995 c 265 § 1.]

Effective date—2009 c 479: See note following RCW 2.56.030.

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

Effective date—1997 c 337 §§ 1 and 2: "Sections 1 and 2 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect July 1, 1997." [1997 c 337 § 9.]

Captions not law—1995 c 265: "Captions as used in this act constitute no part of the law." [1995 c 265 § 29.]

Effective date—1995 c 265: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995,

except that sections 13 through 18 of this act shall take effect January 1, 1996." [1995 c 265 § 30.]

Savings—1995 c 265: "This act shall not be construed as affecting any existing right acquired or liability or obligation incurred under the sections amended or repealed in this act or under any rule or order adopted under those sections, nor as affecting any proceeding instituted under those sections." [1995 c 265 § 31.]

Severability—1995 c 265: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1995 c 265 § 32.]

70.47.020 Definitions. As used in this chapter:

(1) "Administrator" means the Washington basic health plan administrator, who also holds the position of administrator of the Washington state health care authority.

(2) "Health coverage tax credit eligible enrollee" means individual workers and their qualified family members who lose their jobs due to the effects of international trade and are eligible for certain trade adjustment assistance benefits; or are eligible for benefits under the alternative trade adjustment assistance program; or are people who receive benefits from the pension benefit guaranty corporation and are at least fifty-five years old.

(3) "Health coverage tax credit program" means the program created by the Trade Act of 2002 (P.L. 107-210) that provides a federal tax credit that subsidizes private health insurance coverage for displaced workers certified to receive certain trade adjustment assistance benefits and for individuals receiving benefits from the pension benefit guaranty corporation.

(4) "Managed health care system" means: (a) Any health care organization, including health care providers, insurers, health care service contractors, health maintenance organizations, or any combination thereof, that provides directly or by contract basic health care services, as defined by the administrator and rendered by duly licensed providers, to a defined patient population enrolled in the plan and in the managed health care system; or (b) a self-funded or self-insured method of providing insurance coverage to subsidized enrollees provided under RCW 41.05.140 and subject to the limitations under RCW 70.47.100(7).

(5) "Nonsubsidized enrollee" means an individual, or an individual plus the individual's spouse or dependent children: (a) Who is not eligible for medicare; (b) who is not confined or residing in a government-operated institution, unless he or she meets eligibility criteria adopted by the administrator; (c) who is accepted for enrollment by the administrator as provided in RCW 48.43.018, either because the potential enrollee cannot be required to complete the standard health questionnaire under RCW 48.43.018, or, based upon the results of the standard health questionnaire, the potential enrollee would not qualify for coverage under the Washington state health insurance pool; (d) who resides in an area of the state served by a managed health care system participating in the plan; (e) who chooses to obtain basic health care coverage from a particular managed health care system; and (f) who pays or on whose behalf is paid the full costs for participation in the plan, without any subsidy from the plan.

(6) "Premium" means a periodic payment, which an individual, their employer or another financial sponsor makes to the plan as consideration for enrollment in the plan as a subsidized enrollee, a nonsubsidized enrollee, or a health coverage tax credit eligible enrollee.

(7) "Rate" means the amount, negotiated by the administrator with and paid to a participating managed health care system, that is based upon the enrollment of subsidized, nonsubsidized, and health coverage tax credit eligible enrollees in the plan and in that system.

(8) "Subsidy" means the difference between the amount of periodic payment the administrator makes to a managed health care system on behalf of a subsidized enrollee plus the administrative cost to the plan of providing the plan to that subsidized enrollee, and the amount determined to be the subsidized enrollee's responsibility under RCW 70.47.060(2).

(9) "Subsidized enrollee" means:

(a) An individual, or an individual plus the individual's spouse or dependent children:

(i) Who is not eligible for medicare;

(ii) Who is not confined or residing in a government-operated institution, unless he or she meets eligibility criteria adopted by the administrator;

(iii) Who is not a full-time student who has received a temporary visa to study in the United States;

(iv) Who resides in an area of the state served by a managed health care system participating in the plan;

(v) Whose gross family income at the time of enrollment does not exceed two hundred percent of the federal poverty level as adjusted for family size and determined annually by the federal department of health and human services;

(vi) Who chooses to obtain basic health care coverage from a particular managed health care system in return for periodic payments to the plan; and

(vii) Who is not receiving medical assistance administered by the department of social and health services;

(b) An individual who meets the requirements in (a)(i) through (iv), (vi), and (vii) of this subsection and who is a foster parent licensed under chapter 74.15 RCW and whose gross family income at the time of enrollment does not exceed three hundred percent of the federal poverty level as adjusted for family size and determined annually by the federal department of health and human services; and

(c) To the extent that state funds are specifically appropriated for this purpose, with a corresponding federal match, an individual, or an individual's spouse or dependent children, who meets the requirements in (a)(i) through (iv), (vi), and (vii) of this subsection and whose gross family income at the time of enrollment is more than two hundred percent, but less than two hundred fifty-one percent, of the federal poverty level as adjusted for family size and determined annually by the federal department of health and human services.

(10) "Washington basic health plan" or "plan" means the system of enrollment and payment for basic health care services, administered by the plan administrator through participating managed health care systems, created by this chapter. [2009 c 568 § 2; 2007 c 259 § 35; 2005 c 188 § 2; 2004 c 192 § 1; 2000 c 79 § 43; 1997 c 335 § 1; 1997 c 245 § 5. Prior: 1995 c 266 § 2; 1995 c 2 § 3; 1994 c 309 § 4; 1993 c 492 § 209; 1987 1st ex.s. c 5 § 4.]

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

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

Findings—2005 c 188: "The legislature finds that the basic health plan is a valuable means of providing access to affordable health insurance coverage for low-income families and individuals in Washington state. The legislature further finds that persons studying in the United States as full-time students under temporary visas must show, as a condition of receiving their temporary visa, that they have sufficient funds available for self-support during their entire proposed course of study. For this reason, the legislature finds that it is not appropriate to provide subsidized basic health plan coverage to this group of students." [2005 c 188 § 1.]

Effective date—2004 c 192: "This act takes effect January 1, 2005." [2004 c 192 § 6.]

Effective date—Severability—2000 c 79: See notes following RCW 48.04.010.

Effective date—1995 c 266: See note following RCW 70.47.060.

Effective date—1995 c 2: See note following RCW 43.72.090.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

70.47.060 Powers and duties of administrator—Schedule of services—Premiums, copayments, subsidies—Enrollment. The administrator has the following powers and duties:

(1) To design and from time to time revise a schedule of covered basic health care services, including physician services, inpatient and outpatient hospital services, prescription drugs and medications, and other services that may be necessary for basic health care. In addition, the administrator may, to the extent that funds are available, offer as basic health plan services chemical dependency services, mental health services, and organ transplant services. All subsidized and nonsubsidized enrollees in any participating managed health care system under the Washington basic health plan shall be entitled to receive covered basic health care services in return for premium payments to the plan. The schedule of services shall emphasize proven preventive and primary health care and shall include all services necessary for prenatal, postnatal, and well-child care. However, with respect to coverage for subsidized enrollees who are eligible to receive prenatal and postnatal services through the medical assistance program under chapter 74.09 RCW, the administrator shall not contract for such services except to the extent that such services are necessary over not more than a one-month period in order to maintain continuity of care after diagnosis of pregnancy by the managed care provider. The schedule of services shall also include a separate schedule of basic health care services for children, eighteen years of age and younger, for those subsidized or nonsubsidized enrollees who choose to secure basic coverage through the plan only for their dependent children. In designing and revising the schedule of services, the administrator shall consider the guidelines for assessing health services under the mandated benefits act of 1984, RCW 48.47.030, and such other factors as the administrator deems appropriate. The administrator shall encourage enrollees who have been continually enrolled on basic health for a period of one year or more to complete a health risk assessment and participate in programs approved by the administrator that may include wellness, smoking cessation, and chronic disease management programs. In approving programs, the administrator shall consider evidence that any such programs are proven to improve enrollee health status.

(2)(a) To design and implement a structure of periodic premiums due the administrator from subsidized enrollees that is based upon gross family income, giving appropriate consideration to family size and the ages of all family members. The enrollment of children shall not require the enrollment of their parent or parents who are eligible for the plan. The structure of periodic premiums shall be applied to subsidized enrollees entering the plan as individuals pursuant to subsection (11) of this section and to the share of the cost of the plan due from subsidized enrollees entering the plan as employees pursuant to subsection (12) of this section.

(b) To determine the periodic premiums due the administrator from subsidized enrollees under RCW 70.47.020(6)(b). Premiums due for foster parents with gross family income up to two hundred percent of the federal poverty level shall be set at the minimum premium amount charged to enrollees with income below sixty-five percent of the federal poverty level. Premiums due for foster parents with gross family income between two hundred percent and three hundred percent of the federal poverty level shall not exceed one hundred dollars per month.

(c) To determine the periodic premiums due the administrator from nonsubsidized enrollees. Premiums due from nonsubsidized enrollees shall be in an amount equal to the cost charged by the managed health care system provider to the state for the plan plus the administrative cost of providing the plan to those enrollees and the premium tax under RCW 48.14.0201.

(d) To determine the periodic premiums due the administrator from health coverage tax credit eligible enrollees. Premiums due from health coverage tax credit eligible enrollees must be in an amount equal to the cost charged by the managed health care system provider to the state for the plan, plus the administrative cost of providing the plan to those enrollees and the premium tax under RCW 48.14.0201. The administrator will consider the impact of eligibility determination by the appropriate federal agency designated by the Trade Act of 2002 (P.L. 107-210) as well as the premium collection and remittance activities by the United States internal revenue service when determining the administrative cost charged for health coverage tax credit eligible enrollees.

(e) An employer or other financial sponsor may, with the prior approval of the administrator, pay the premium, rate, or any other amount on behalf of a subsidized or nonsubsidized enrollee, by arrangement with the enrollee and through a mechanism acceptable to the administrator. The administrator shall establish a mechanism for receiving premium payments from the United States internal revenue service for health coverage tax credit eligible enrollees.

(f) To develop, as an offering by every health carrier providing coverage identical to the basic health plan, as configured on January 1, 2001, a basic health plan model plan with uniformity in enrollee cost-sharing requirements.

(g) To collect from all public employees a voluntary opt-in donation of varying amounts through a monthly or one-time payroll deduction as provided for in RCW 41.04.230. The donation must be deposited in the health services account established in *RCW 43.72.900 to be used for the sole purpose of maintaining enrollment capacity in the basic health plan.

The administrator shall send an annual notice to state employees extending the opportunity to participate in the opt-in donation program for the purpose of saving enrollment slots for the basic health plan. The first such notice shall be sent to public employees no later than June 1, 2009.

The notice shall include monthly sponsorship levels of fifteen dollars per month, thirty dollars per month, fifty dollars per month, and any other amounts deemed reasonable by the administrator. The sponsorship levels shall be named "safety net contributor," "safety net hero," and "safety net champion" respectively. The donation amounts provided shall be tied to the level of coverage the employee will be purchasing for a working poor individual without access to health care coverage.

The administrator shall ensure that employees are given an opportunity to establish a monthly standard deduction or a one-time deduction towards the basic health plan donation program. The basic health plan donation program shall be known as the "save the safety net program."

The donation permitted under this subsection may not be collected from any public employee who does not actively opt in to the donation program. Written notification of intent to discontinue participation in the donation program must be provided by the public employee at least fourteen days prior to the next standard deduction.

(3) To evaluate, with the cooperation of participating managed health care system providers, the impact on the basic health plan of enrolling health coverage tax credit eligible enrollees. The administrator shall issue to the appropriate committees of the legislature preliminary evaluations on June 1, 2005, and January 1, 2006, and a final evaluation by June 1, 2006. The evaluation shall address the number of persons enrolled, the duration of their enrollment, their utilization of covered services relative to other basic health plan enrollees, and the extent to which their enrollment contributed to any change in the cost of the basic health plan.

(4) To end the participation of health coverage tax credit eligible enrollees in the basic health plan if the federal government reduces or terminates premium payments on their behalf through the United States internal revenue service.

(5) To design and implement a structure of enrollee cost-sharing due a managed health care system from subsidized, nonsubsidized, and health coverage tax credit eligible enrollees. The structure shall discourage inappropriate enrollee utilization of health care services, and may utilize copayments, deductibles, and other cost-sharing mechanisms, but shall not be so costly to enrollees as to constitute a barrier to appropriate utilization of necessary health care services.

(6) To limit enrollment of persons who qualify for subsidies so as to prevent an overexpenditure of appropriations for such purposes. Whenever the administrator finds that there is danger of such an overexpenditure, the administrator shall close enrollment until the administrator finds the danger no longer exists. Such a closure does not apply to health coverage tax credit eligible enrollees who receive a premium subsidy from the United States internal revenue service as long as the enrollees qualify for the health coverage tax credit program. To prevent the risk of overexpenditure, the administrator may disenroll persons receiving subsidies from the program based on criteria adopted by the administrator. The criteria may include: Length of continual enrollment on the program, income level, or eligibility for other coverage. The administrator shall first attempt to identify enrollees who are eligible for other coverage, and, working with the department of social and health service as provided in RCW 70.47.010(5)(d), transition enrollees eligible for medical assistance to that coverage. The administrator shall develop criteria for persons disenrolled under this subsection to reapply for the program.

(7) To limit the payment of subsidies to subsidized enrollees, as defined in RCW 70.47.020. The level of subsidy provided to persons who qualify may be based on the lowest cost plans, as defined by the administrator.

(8) To adopt a schedule for the orderly development of the delivery of services and availability of the plan to residents of the state, subject to the limitations contained in RCW 70.47.080 or any act appropriating funds for the plan.

(9) To solicit and accept applications from managed health care systems, as defined in this chapter, for inclusion as eligible basic health care providers under the plan for subsidized enrollees, nonsubsidized enrollees, or health coverage tax credit eligible enrollees. The administrator shall endeavor to assure that covered basic health care services are available to any enrollee of the plan from among a selection of two or more participating managed health care systems. In adopting any rules or procedures applicable to managed health care systems and in its dealings with such systems, the administrator shall consider and make suitable allowance for the need for health care services and the differences in local availability of health care resources, along with other resources, within and among the several areas of the state. Contracts with participating managed health care systems shall ensure that basic health plan enrollees who become eligible for medical assistance may, at their option, continue to receive services from their existing providers within the managed health care system if such providers have entered into provider agreements with the department of social and health services.

(10) To receive periodic premiums from or on behalf of subsidized, nonsubsidized, and health coverage tax credit eligible enrollees, deposit them in the basic health plan operating account, keep records of enrollee status, and authorize periodic payments to managed health care systems on the basis of the number of enrollees participating in the respective managed health care systems.

(11) To accept applications from individuals residing in areas served by the plan, on behalf of themselves and their spouses and dependent children, for enrollment in the Washington basic health plan as subsidized, nonsubsidized, or health coverage tax credit eligible enrollees, to give priority to members of the Washington national guard and reserves who served in Operation Enduring Freedom, Operation Iraqi Freedom, or Operation Noble Eagle, and their spouses and dependents, for enrollment in the Washington basic health plan, to establish appropriate minimum-enrollment periods for enrollees as may be necessary, and to determine, upon application and on a reasonable schedule defined by the authority, or at the request of any enrollee, eligibility due to current gross family income for sliding scale premiums. Funds received by a family as part of participation in the adoption support program authorized under RCW 26.33.320 and **74.13.100 through 74.13.145 shall not be counted

toward a family's current gross family income for the purposes of this chapter. When an enrollee fails to report income or income changes accurately, the administrator shall have the authority either to bill the enrollee for the amounts overpaid by the state or to impose civil penalties of up to two hundred percent of the amount of subsidy overpaid due to the enrollee incorrectly reporting income. The administrator shall adopt rules to define the appropriate application of these sanctions and the processes to implement the sanctions provided in this subsection, within available resources. No subsidy may be paid with respect to any enrollee whose current gross family income exceeds twice the federal poverty level or, subject to RCW 70.47.110, who is a recipient of medical assistance or medical care services under chapter 74.09 RCW. If a number of enrollees drop their enrollment for no apparent good cause, the administrator may establish appropriate rules or requirements that are applicable to such individuals before they will be allowed to reenroll in the plan.

(12) To accept applications from business owners on behalf of themselves and their employees, spouses, and dependent children, as subsidized or nonsubsidized enrollees, who reside in an area served by the plan. The administrator may require all or the substantial majority of the eligible employees of such businesses to enroll in the plan and establish those procedures necessary to facilitate the orderly enrollment of groups in the plan and into a managed health care system. The administrator may require that a business owner pay at least an amount equal to what the employee pays after the state pays its portion of the subsidized premium cost of the plan on behalf of each employee enrolled in the plan. Enrollment is limited to those not eligible for medicare who wish to enroll in the plan and choose to obtain the basic health care coverage and services from a managed care system participating in the plan. The administrator shall adjust the amount determined to be due on behalf of or from all such enrollees whenever the amount negotiated by the administrator with the participating managed health care system or systems is modified or the administrative cost of providing the plan to such enrollees changes.

(13) To determine the rate to be paid to each participating managed health care system in return for the provision of covered basic health care services to enrollees in the system. Although the schedule of covered basic health care services will be the same or actuarially equivalent for similar enrollees, the rates negotiated with participating managed health care systems may vary among the systems. In negotiating rates with participating systems, the administrator shall consider the characteristics of the populations served by the respective systems, economic circumstances of the local area, the need to conserve the resources of the basic health plan trust account, and other factors the administrator finds relevant.

(14) To monitor the provision of covered services to enrollees by participating managed health care systems in order to assure enrollee access to good quality basic health care, to require periodic data reports concerning the utilization of health care services rendered to enrollees in order to provide adequate information for evaluation, and to inspect the books and records of participating managed health care systems to assure compliance with the purposes of this chapter. In requiring reports from participating managed health care systems, including data on services rendered enrollees, the administrator shall endeavor to minimize costs, both to the managed health care systems and to the plan. The administrator shall coordinate any such reporting requirements with other state agencies, such as the insurance commissioner and the department of health, to minimize duplication of effort.

(15) To evaluate the effects this chapter has on private employer-based health care coverage and to take appropriate measures consistent with state and federal statutes that will discourage the reduction of such coverage in the state.

(16) To develop a program of proven preventive health measures and to integrate it into the plan wherever possible and consistent with this chapter.

(17) To provide, consistent with available funding, assistance for rural residents, underserved populations, and persons of color.

(18) In consultation with appropriate state and local government agencies, to establish criteria defining eligibility for persons confined or residing in government-operated institutions.

(19) To administer the premium discounts provided under RCW 48.41.200(3)(a) (i) and (ii) pursuant to a contract with the Washington state health insurance pool.

(20) To give priority in enrollment to persons who disenrolled from the program in order to enroll in medicaid, and subsequently became ineligible for medicaid coverage. [2009 c 568 § 3; 2007 c 259 § 36; 2006 c 343 § 9; 2004 c 192 § 3; 2001 c 196 § 13; 2000 c 79 § 34. Prior: 1998 c 314 § 17; 1998 c 148 § 1; prior: 1997 c 337 § 2; 1997 c 335 § 2; 1997 c 245 § 6; 1997 c 231 § 206; prior: 1995 c 266 § 1; 1995 c 2 § 4; 1994 c 309 § 5; 1993 c 492 § 212; 1992 c 232 § 908; prior: 1991 sp.s. c 4 § 2; 1991 c 3 § 339; 1987 1st ex.s. c 5 § 8.]

Reviser's note: *(1) RCW 43.72.900 was repealed by 2009 c 479 § 29.

**(2) RCW 74.13.100 through 74.13.145 were recodified as RCW 74.13A.005 through 74.13A.080 pursuant to 2009 c 520 § 95.

Effective date—2009 c 568 § 3: "Section 3 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 19, 2009]." [2009 c 568 § 8.]

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

Findings—2006 c 343: See note following RCW 43.60A.160.

Effective date—2004 c 192: See note following RCW 70.47.020.

Effective date—2001 c 196: See note following RCW 48.20.025.

Effective date—Severability—2000 c 79: See notes following RCW 48.04.010.

Effective date—1997 c 337 §§ 1 and 2: See note following RCW 70.47.015.

Short title—Part headings and captions not law—Severability—Effective dates—1997 c 231: See notes following RCW 48.43.005.

Effective date—1995 c 266: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 c 266 § 5.]

Effective date—1995 c 2: See note following RCW 43.72.090.

Contingency—1994 c 309 §§ 5 and 6: "If a court in a permanent injunction, permanent order, or final decision determines that the amendments made by sections 5 and 6, chapter 309, Laws of 1994, must be submitted to the people for their adoption and ratification, or rejection, as a result of section 13, chapter 2, Laws of 1994, the amendments made by sections 5 and 6, chapter 309, Laws of 1994, shall be null and void." [1994 c 309 § 7.]

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

Severability—1992 c 232: See note following RCW 43.33A.180.

Effective date—1991 sp.s. c 4: See note following RCW 70.47.030.

70.47.070 Benefits from other coverages not reduced. The benefits available under the basic health plan shall be excess to the benefits payable under the terms of any insurance policy issued to or on the behalf of an enrollee that provides payments toward medical expenses without a determination of liability for the injury. Except where in conflict with federal or state law, the benefits of any other health plan or insurance which covers an enrollee shall be determined before the benefits of the basic health plan. The administrator shall require that managed health care systems conduct and report on coordination of benefits activities as provided under this section. [2009 c 568 § 4; 1987 1st ex.s. c 5 § 9.]

70.47.100 Participation by a managed health care system. (1) A managed health care system participating in the plan shall do so by contract with the administrator and shall provide, directly or by contract with other health care providers, covered basic health care services to each enrollee covered by its contract with the administrator as long as payments from the administrator on behalf of the enrollee are current. A participating managed health care system may offer, without additional cost, health care benefits or services not included in the schedule of covered services under the plan. A participating managed health care system shall not give preference in enrollment to enrollees who accept such additional health care benefits or services. Managed health care systems participating in the plan shall not discriminate against any potential or current enrollee based upon health status, sex, race, ethnicity, or religion. The administrator may receive and act upon complaints from enrollees regarding failure to provide covered services or efforts to obtain payment, other than authorized copayments, for covered services directly from enrollees, but nothing in this chapter empowers the administrator to impose any sanctions under Title 18 RCW or any other professional or facility licensing statute.

(2) The plan shall allow, at least annually, an opportunity for enrollees to transfer their enrollments among participating managed health care systems serving their respective areas. The administrator shall establish a period of at least twenty days in a given year when this opportunity is afforded enrollees, and in those areas served by more than one participating managed health care system the administrator shall endeavor to establish a uniform period for such opportunity. The plan shall allow enrollees to transfer their enrollment to another participating managed health care system at any time upon a showing of good cause for the transfer.

(3) Prior to negotiating with any managed health care system, the administrator shall determine, on an actuarially sound basis, the reasonable cost of providing the schedule of basic health care services, expressed in terms of upper and lower limits, and recognizing variations in the cost of providing the services through the various systems and in different areas of the state.

(4) In negotiating with managed health care systems for participation in the plan, the administrator shall adopt a uniform procedure that includes at least the following:

(a) The administrator shall issue a request for proposals, including standards regarding the quality of services to be provided; financial integrity of the responding systems; and responsiveness to the unmet health care needs of the local communities or populations that may be served;

(b) The administrator shall then review responsive proposals and may negotiate with respondents to the extent necessary to refine any proposals;

(c) The administrator may then select one or more systems to provide the covered services within a local area; and

(d) The administrator may adopt a policy that gives preference to respondents, such as nonprofit community health clinics, that have a history of providing quality health care services to low-income persons.

(5) The administrator may contract with a managed health care system to provide covered basic health care services to subsidized enrollees, nonsubsidized enrollees, health coverage tax credit eligible enrollees, or any combination thereof.

(6) The administrator may establish procedures and policies to further negotiate and contract with managed health care systems following completion of the request for proposal process in subsection (4) of this section, upon a determination by the administrator that it is necessary to provide access, as defined in the request for proposal documents, to covered basic health care services for enrollees.

(7) The administrator may implement a self-funded or self-insured method of providing insurance coverage to subsidized enrollees, as provided under RCW 41.05.140. Prior to implementing a self-funded or self-insured method, the administrator shall ensure that funding available in the basic health plan self-insurance reserve account is sufficient for the self-funded or self-insured risk assumed, or expected to be assumed, by the administrator. If implementing a self-funded or self-insured method, the administrator may request funds to be moved from the basic health plan trust account or the basic health plan subscription account to the basic health plan self-insurance reserve account established in RCW 41.05.140. [2009 c 568 § 5; 2004 c 192 § 4; 2000 c 79 § 35; 1987 1st ex.s. c 5 § 12.]

Effective date—2004 c 192: See note following RCW 70.47.020.

Effective date—Severability—2000 c 79: See notes following RCW 48.04.010.

70.47.130 Exemption from insurance code. (1) The activities and operations of the Washington basic health plan under this chapter, including those of managed health care systems to the extent of their participation in the plan, are exempt from the provisions and requirements of Title 48 RCW except:

(a) Benefits as provided in RCW 70.47.070;

(b) Managed health care systems are subject to the provisions of RCW 48.43.022, 48.43.500, 70.02.045, 48.43.505 through 48.43.535, 43.70.235, 48.43.545, 48.43.550, 70.02.110, and 70.02.900;

(c) Persons appointed or authorized to solicit applications for enrollment in the basic health plan, including employees of the health care authority, must comply with

chapter 48.17 RCW. For purposes of this subsection (1)(c), "solicit" does not include distributing information and applications for the basic health plan and responding to questions;

(d) Amounts paid to a managed health care system by the basic health plan for participating in the basic health plan and providing health care services for nonsubsidized enrollees in the basic health plan must comply with RCW 48.14.0201; and

(e) Administrative simplification requirements as provided in chapter 298, Laws of 2009.

(2) The purpose of the 1994 amendatory language to this section in chapter 309, Laws of 1994 is to clarify the intent of the legislature that premiums paid on behalf of nonsubsidized enrollees in the basic health plan are subject to the premium and prepayment tax. The legislature does not consider this clarifying language to either raise existing taxes nor to impose a tax that did not exist previously. [2009 c 298 § 4; 2004 c 115 § 2; 2000 c 5 § 21; 1997 c 337 § 8; 1994 c 309 § 6; 1987 1st ex.s. c 5 § 15.]

Intent—Purpose—2000 c 5: See RCW 48.43.500.

Application—Short title—Captions not law—Construction—Severability—Application to contracts—Effective dates—2000 c 5: See notes following RCW 48.43.500.

Contingency—1994 c 309 §§ 5 and 6: See note following RCW 70.47.060.

70.47.170 Annual reporting requirement. (1) Beginning in November 2012, the health care authority, in coordination with the department of social and health services, shall by November 15th of each year report to the legislature:

(a) The number of basic health plan enrollees who: (i) Upon enrollment or recertification had reported being employed, and beginning with the 2008 report, the month and year they reported being hired; or (ii) upon enrollment or recertification had reported being the dependent of someone who was employed, and beginning with the 2008 report, the month and year they reported the employed person was hired; and (iii) the total cost to the state for these enrollees. The information shall be reported by employer size for employers having more than fifty employees as enrollees or with dependents as enrollees. This information shall be provided for the preceding January and June of that year.

(b) The following aggregated information: (i) The number of employees who are enrollees or with dependents as enrollees by private and governmental employers; (ii) the number of employees who are enrollees or with dependents as enrollees by employer size for employers with fifty or fewer employees, fifty-one to one hundred employees, one hundred one to one thousand employees, one thousand one to five thousand employees and more than five thousand employees; and (iii) the number of employees who are enrollees or with dependents as enrollees by industry type.

(2) For each aggregated classification, the report will include the number of hours worked and total cost to the state for these enrollees. This information shall be for each quarter of the preceding year. [2009 c 568 § 7; 2006 c 264 § 1.]

70.47.902 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. ***(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.) (Effective January 1, 2014.)*** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 151.]

Effective dates—2009 c 521 §§ 5-8, 79, 87-103, 107, 151, 165, 166, 173-175, and 190-192: See note following RCW 2.10.900.

Chapter 70.47A RCW

SMALL EMPLOYER HEALTH INSURANCE PARTNERSHIP PROGRAM

Sections

70.47A.030 Health insurance partnership established—Administrator duties.
70.47A.040 Applications for premium subsidies.
70.47A.070 Reports.
70.47A.901 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. *(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*

70.47A.030 Health insurance partnership established—Administrator duties. (1) To the extent funding is appropriated in the operating budget for this purpose, the health insurance partnership is established. The administrator shall be responsible for the implementation and operation of the health insurance partnership, directly or by contract. The administrator shall offer premium subsidies to eligible partnership participants under RCW 70.47A.040.

(2) Consistent with policies adopted by the board under RCW 70.47A.110, the administrator shall, directly or by contract:

(a) Establish and administer procedures for enrolling small employers in the partnership, including publicizing the existence of the partnership and disseminating information on enrollment, and establishing rules related to minimum participation of employees in small groups purchasing health insurance through the partnership. Opportunities to publicize the program for outreach and education of small employers on the value of insurance shall explore the use of online employer guides. As a condition of participating in the partnership, a small employer must agree to establish a cafeteria plan under section 125 of the federal internal revenue code that will enable employees to use pretax dollars to pay their share of their health benefit plan premium. The partnership shall provide technical assistance to small employers for this purpose;

(b) Establish and administer procedures for health benefit plan enrollment by employees of small employers during open enrollment periods and outside of open enrollment periods upon the occurrence of any qualifying event specified in the federal health insurance portability and accountability act

of 1996 or applicable state law. Except to the extent authorized in RCW 70.47A.110(1)(e), neither the employer nor the partnership shall limit an employee's choice of coverage from among the health benefit plans offered through the partnership;

(c) Establish and manage a system of collecting and transmitting to the applicable carriers all premium payments or contributions made by or on behalf of partnership participants, including employer contributions, automatic payroll deductions for partnership participants, premium subsidy payments, and contributions from philanthropies;

(d) Establish and manage a system for determining eligibility for and making premium subsidy payments under chapter 259, Laws of 2007;

(e) Establish a mechanism to apply a surcharge to each health benefit plan purchased through the partnership, which shall be used only to pay for administrative and operational expenses of the partnership. The surcharge must be applied uniformly to all health benefit plans purchased through the partnership. Any surcharge amount may be added to the premium, but shall not be considered part of the small group community rate, and shall be applied only to the coverage purchased through the partnership. Surcharges may not be used to pay any premium assistance payments under this chapter. The surcharge shall reflect administrative and operational expenses remaining after any appropriation provided by the legislature to support administrative or operational expenses of the partnership during the year the surcharge is assessed;

(f) Design a schedule of premium subsidies that is based upon gross family income, giving appropriate consideration to family size and the ages of all family members based on a benchmark health benefit plan designated by the board. The amount of an eligible partnership participant's premium subsidy shall be determined by applying a sliding scale subsidy schedule with the percentage of premium similar to that developed for subsidized basic health plan enrollees under RCW 70.47.060. The subsidy shall be applied to the employee's premium obligation for his or her health benefit plan, so that employees benefit financially from any employer contribution to the cost of their coverage through the partnership.

(3) The administrator may enter into interdepartmental agreements with the office of the insurance commissioner, the department of social and health services, and any other state agencies necessary to implement this chapter. [2009 c 257 § 1; 2008 c 143 § 2; 2007 c 259 § 58; 2006 c 255 § 3.]

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

70.47A.040 Applications for premium subsidies. Beginning January 1, 2011, subject to sufficient state or federal funding being provided specifically for this purpose, the administrator shall accept applications from eligible partnership participants, on behalf of themselves, their spouses, and their dependent children, to receive premium subsidies through the health insurance partnership. Every effort shall be made to coordinate premium subsidies for dependent children with federal funding available under Title XIX and Title XXI of the federal social security act, consistent with the requirements established in RCW 74.09.470(4) for the employer-sponsored insurance program at the department of social and health services. [2009 c 257 § 2; 2008 c 143 § 3; 2007 c 260 § 6; 2006 c 255 § 4.]

70.47A.070 Reports. Upon implementation of the health insurance partnership program, the administrator shall report biennially to the relevant policy and fiscal committees of the legislature on the effectiveness and efficiency of the health insurance partnership program, including enrollment trends, the services and benefits covered under the purchased health benefit plans, consumer satisfaction, and other program operational issues. [2009 c 257 § 3; 2008 c 143 § 4; 2006 c 255 § 7.]

70.47A.901 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. ***(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 152.]

Chapter 70.48 RCW
CITY AND COUNTY JAILS ACT

Sections

70.48.020 Definitions.
70.48.490 Delivery and administration of medications and medication assistance by nonpractitioner jail personnel—Conditions.

70.48.020 Definitions. As used in this chapter the words and phrases in this section shall have the meanings indicated unless the context clearly requires otherwise.

(1) "Administration" means the direct application of a drug whether by ingestion or inhalation, to the body of an inmate by a practitioner or nonpractitioner jail personnel.

(2) "Correctional facility" means a facility operated by a governing unit primarily designed, staffed, and used for the housing of adult persons serving terms not exceeding one year for the purposes of punishment, correction, and rehabilitation following conviction of a criminal offense.

(3) "Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of medication whether or not there is an agency relationship.

(4) "Detention facility" means a facility operated by a governing unit primarily designed, staffed, and used for the temporary housing of adult persons charged with a criminal offense prior to trial or sentencing and for the housing of adult persons for purposes of punishment and correction after

sentencing or persons serving terms not to exceed ninety days.

(5) "Drug" and "legend drug" have the same meanings as provided in RCW 69.41.010.

(6) "Governing unit" means the city and/or county or any combinations of cities and/or counties responsible for the operation, supervision, and maintenance of a jail.

(7) "Health care" means preventive, diagnostic, and rehabilitative services provided by licensed health care professionals and/or facilities; such care to include providing prescription drugs where indicated.

(8) "Holding facility" means a facility operated by a governing unit primarily designed, staffed, and used for the temporary housing of adult persons charged with a criminal offense prior to trial or sentencing and for the temporary housing of such persons during or after trial and/or sentencing, but in no instance shall the housing exceed thirty days.

(9) "Jail" means any holding, detention, special detention, or correctional facility as defined in this section.

(10) "Major urban" means a county or combination of counties which has a city having a population greater than twenty-six thousand based on the 1978 projections of the office of financial management.

(11) "Medication" means a drug, legend drug, or controlled substance requiring a prescription or an over-the-counter or nonprescription drug.

(12) "Medication assistance" means assistance rendered by nonpractitioner jail personnel to an inmate residing in a jail to facilitate the individual's self-administration of a legend drug or controlled substance or nonprescription medication. "Medication assistance" includes reminding or coaching the individual, handing the medication container to the individual, opening the individual's medication container, using an enabler, or placing the medication in the individual's hand.

(13) "Medium urban" means a county or combination of counties which has a city having a population equal to or greater than ten thousand but less than twenty-six thousand based on the 1978 projections of the office of financial management.

(14) "Nonpractitioner jail personnel" means appropriately trained staff who are authorized to manage, deliver, or administer prescription and nonprescription medication under RCW 70.48.490.

(15) "Office" means the office of financial management.

(16) "Practitioner" has the same meaning as provided in RCW 69.41.010.

(17) "Rural" means a county or combination of counties which has a city having a population less than ten thousand based on the 1978 projections of the office of financial management.

(18) "Special detention facility" means a minimum security facility operated by a governing unit primarily designed, staffed, and used for the housing of special populations of sentenced persons who do not require the level of security normally provided in detention and correctional facilities including, but not necessarily limited to, persons convicted of offenses under RCW 46.61.502 or 46.61.504. [2009 c 411 § 3; 1987 c 462 § 6; 1986 c 118 § 1; 1983 c 165 § 34; 1981 c 136 § 25; 1979 ex.s. c 232 § 11; 1977 ex.s. c 316 § 2.]

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

Effective dates—1987 c 462: See note following RCW 13.04.116.

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

Effective date—1981 c 136: See RCW 72.09.900.

Severability—1977 ex.s. c 316: "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 316 § 26.]

70.48.490 Delivery and administration of medications and medication assistance by nonpractitioner jail personnel—Conditions. Jails may provide for the delivery and administration of medications and medication assistance for inmates in their custody by nonpractitioner jail personnel, subject to the following conditions:

(1) The jail administrator or his or her designee, or chief law enforcement executive or his or her designee, shall enter into an agreement between the jail and a licensed pharmacist, pharmacy, or other licensed practitioner or health care facility to ensure access to pharmaceutical services on a twenty-four hour a day basis, including consultation and dispensing services.

(2) The jail administrator or chief law enforcement executive shall adopt policies which address the designation and training of nonpractitioner jail personnel who may deliver and administer medications or provide medication assistance to inmates as provided in this chapter. The policies must address the administration of prescriptions from licensed practitioners prescribing within the scope of their prescriptive authority, the identification of medication to be delivered and administered or administered through medication assistance, the means of securing medication with attention to the safeguarding of legend drugs, and the means of maintaining a record of the delivery, administration, self-administration, or medication assistance of all medication. The jail administrator or chief law enforcement executive shall designate a physician licensed under chapter 18.71 RCW, or a registered nurse or advanced registered nurse practitioner licensed under chapter 18.79 RCW, to train the designated nonpractitioner jail personnel in proper medication procedures and monitor their compliance with the procedures.

(3) The jail administrator or chief law enforcement executive shall consult with one or more pharmacists, and one or more licensed physicians or nurses, in the course of developing the policies described in subsections (1) and (2) of this section. A jail shall provide the Washington association of sheriffs and police chiefs with a copy of the jail's current policies regarding medication management.

(4) The practitioner or nonpractitioner jail personnel delivering, administering, or providing medication assistance is in receipt of (a) for prescription drugs, a written, current, and unexpired prescription, and instructions for administration from a licensed practitioner prescribing within the scope of his or her prescriptive authority for administration of the prescription drug; (b) for nonprescription drugs, a written, current, and unexpired instruction from a licensed practitioner regarding the administration of the nonprescription drug; and (c) for minors under the age of eighteen, a written, cur-

rent consent from the minor's parent, legal guardian, or custodian consenting to the administration of the medication.

(5) Nonpractitioner jail personnel may help in the preparation of legend drugs or controlled substances for self-administration where a practitioner has determined and communicated orally or by written direction that the medication preparation assistance is necessary and appropriate. Medication assistance shall not include assistance with intravenous medications or injectable medications.

(6) Nonpractitioner jail personnel shall not include inmates.

(7) All medication is delivered and administered and all medication assistance is provided by a practitioner or nonpractitioner jail personnel pursuant to the policies adopted in this section, and in compliance with the prescription of a practitioner prescribing within the scope of his or her prescriptive authority, or the written instructions as provided in this section.

(8) The jail administrator or the chief law enforcement executive shall ensure that all nonpractitioner jail personnel authorized to deliver, administer, and provide medication assistance are trained pursuant to the policies adopted in this section prior to being permitted to deliver, administer, or provide medication assistance to an inmate. [2009 c 411 § 4.]

Chapter 70.54 RCW
MISCELLANEOUS HEALTH AND SAFETY PROVISIONS

Sections

70.54.220 Practitioners to provide information on prenatal testing. *(Effective until July 1, 2010.)*
70.54.220 Practitioners to provide information on prenatal testing and cord blood banking. *(Effective July 1, 2010.)*
70.54.340 Electrology, body art, body piercing, and tattooing—Rules, sterilization requirements. *(Effective July 1, 2010.)*
70.54.380 Primary care medical home reimbursement pilot projects. *(Expires July 1, 2013.)*
70.54.390 Selection of a pilot site—Reimbursement method. *(Expires July 1, 2013.)*
70.54.400 Retail restroom access—Customers with medical conditions—Penalty.
70.54.410 Unintended pregnancies—Sexual health education funding.

70.54.220 Practitioners to provide information on prenatal testing. ***(Effective until July 1, 2010.)*** All persons licensed or certified by the state of Washington to provide prenatal care or to practice medicine shall provide information regarding the use and availability of prenatal tests to all pregnant women in their care. [2009 c 495 § 8; 1988 c 276 § 5.]

Expiration date—2009 c 495 § 8: "Section 8 of this act expires July 1, 2010." [2009 c 495 § 15.]

Effective date—2009 c 495: See note following RCW 43.20.050.

Effective date—1988 c 276 § 5: "Section 5 of this act shall take effect December 31, 1989." [1988 c 276 § 10.]

70.54.220 Practitioners to provide information on prenatal testing and cord blood banking. ***(Effective July 1, 2010.)*** All persons licensed or certified by the state of Washington to provide prenatal care or to practice medicine shall provide information to all pregnant women in their care regarding:

(1) The use and availability of prenatal tests; and

(2) Using objective and standardized information: (a) The differences between and potential benefits and risks involved in public and private cord blood banking that is sufficient to allow a pregnant woman to make an informed decision before her third trimester of pregnancy on whether to participate in a private or public cord blood banking program; and (b) the opportunity to donate, to a public cord blood bank, blood and tissue extracted from the placenta and umbilical cord following delivery of a newborn child. [2009 c 495 § 9; 2008 c 56 § 2; 1988 c 276 § 5.]

Effective date—2009 c 495 § 9: "Section 9 of this act takes effect July 1, 2010." [2009 c 495 § 16.]

Purpose—Effective date—2008 c 56: See note following RCW 70.54.222.

Effective date—1988 c 276 § 5: "Section 5 of this act shall take effect December 31, 1989." [1988 c 276 § 10.]

70.54.340 Electrology, body art, body piercing, and tattooing—Rules, sterilization requirements. ***(Effective July 1, 2010.)*** The secretary of health shall adopt by rule requirements, in accordance with nationally recognized professional standards, for precautions against the spread of disease, including the sterilization of needles and other instruments, including sharps and jewelry, employed by electrologists, persons engaged in the practice of body art, body piercing, and tattoo artists. The secretary shall consider the standard precautions for infection control, as recommended by the United States centers for disease control, and guidelines for infection control, as recommended by national industry standards in the adoption of these sterilization requirements. [2009 c 412 § 19; 2001 c 194 § 3.]

Effective date—2009 c 412 §§ 1-21: See RCW 18.300.901.

Short title—Implementation—2009 c 412: See RCW 18.300.900 and 18.300.902.

70.54.380 Primary care medical home reimbursement pilot projects. ***(Expires July 1, 2013.)*** The health care authority and the department of social and health services shall design, oversee implementation, and evaluate one or more primary care medical home reimbursement pilot projects in the state to include as participants public payors, private health carriers, third-party purchasers, and health care providers. Based on input from participants, the agencies shall:

(1) Determine the number and location of primary care medical home reimbursement pilots;

(2) Determine criteria to select primary care clinics to serve as pilot sites to facilitate testing of medical home reimbursement methods in a variety of primary care settings;

(3) Select pilot sites from those primary care provider clinics that currently employ a number of activities and functions typically associated with medical homes, or from sites that have been selected by the department of health to participate in a medical home collaborative under section 2, chapter 295, Laws of 2008;

(4) Determine one or more reimbursement methods to be tested by the pilots;

(5) Identify pilot performance measures for clinical quality, chronic care management, cost, and patient experience through patient self-reporting; and

(6) Appropriately coordinate during planning and operation of the pilots with the department of health medical home collaboratives and with other private and public efforts to promote adoption of medical homes within the state. [2009 c 305 § 2.]

Intent—2009 c 305: "The legislature declares that collaboration among public payors, private health carriers, third-party purchasers, and providers to identify appropriate reimbursement methods to align incentives in support of primary care medical homes is in the best interest of the public. The legislature therefore intends to exempt from state antitrust laws, and to provide immunity from federal antitrust laws through the state action doctrine, for activities undertaken pursuant to pilots designed and implemented under section 2 of this act that might otherwise be constrained by such laws. The legislature does not intend and does not authorize any person or entity to engage in activities or to conspire to engage in activities that would constitute per se violations of state and federal antitrust laws including, but not limited to, agreements among competing health care providers or health carriers as to the price or specific level of reimbursement for health care services." [2009 c 305 § 1.]

Expiration date—2009 c 305: "This act expires July 1, 2013." [2009 c 305 § 4.]

70.54.390 Selection of a pilot site—Reimbursement method. ***(Expires July 1, 2013.)*** The health care authority and the department of social and health services may select a pilot site that currently employs the following activities and functions associated with medical homes: Provision of preventive care, wellness counseling, primary care, coordination of primary care with specialty and hospital care, and urgent care services; availability of office appointments seven days per week and e-mail and telephone consultation; availability of telephone access for urgent care consultation on a seven-day per week, twenty-four hours per day basis; and use of a primary care provider panel size that promotes the ability of participating providers to appropriately provide the scope of services described in this section. The reimbursement method chosen for this pilot site must include a fixed monthly payment per person participating in the pilot site for the services described in this section. These services would be provided without the submission of claims for payment from any health carrier by the medical home provider. Agreements for payment made directly by a consumer or other entity paying on the consumer's behalf must comply with the provisions applicable to direct patient-provider primary care practices under chapter 48.150 RCW. In addition, the agencies may determine that the pilot should include a high deductible health plan or other health benefit plan designed to wrap around the primary care services offered under this section. [2009 c 305 § 3.]

Intent—Expiration date—2009 c 305: See notes following RCW 70.54.380.

70.54.400 Retail restroom access—Customers with medical conditions—Penalty. (1) For purposes of this section:

(a) "Customer" means an individual who is lawfully on the premises of a retail establishment.

(b) "Eligible medical condition" means:

(i) Crohn's disease, ulcerative colitis, or any other inflammatory bowel disease;

(ii) Irritable bowel syndrome;

(iii) Any condition requiring use of an ostomy device; or

(iv) Any permanent or temporary medical condition that requires immediate access to a restroom.

(c) "Employee restroom" means a restroom intended for employees only in a retail facility and not intended for customers.

(d) "Health care provider" means an advanced registered nurse practitioner licensed under chapter 18.79 RCW, an osteopathic physician or surgeon licensed under chapter 18.57 RCW, an osteopathic physicians assistant licensed under chapter 18.57A RCW, a physician or surgeon licensed under chapter 18.71 RCW, or a physician assistant licensed under chapter 18.71A RCW.

(e) "Retail establishment" means a place of business open to the general public for the sale of goods or services. Retail establishment does not include any structure such as a filling station, service station, or restaurant of eight hundred square feet or less that has an employee restroom located within that structure.

(2) A retail establishment that has an employee restroom must allow a customer with an eligible medical condition to use that employee restroom during normal business hours if:

(a) The customer requesting the use of the employee restroom provides in writing either:

(i) A signed statement by the customer's health care provider on a form that has been prepared by the department of health under subsection (4) of this section; or

(ii) An identification card that is issued by a nonprofit organization whose purpose includes serving individuals who suffer from an eligible medical condition; and

(b) One of the following conditions are met:

(i) The employee restroom is reasonably safe and is not located in an area where providing access would create an obvious health or safety risk to the customer; or

(ii) Allowing the customer to access the restroom facility does not pose a security risk to the retail establishment or its employees.

(3) A retail establishment that has an employee restroom must allow a customer to use that employee restroom during normal business hours if:

(a)(i) Three or more employees of the retail establishment are working at the time the customer requests use of the employee restroom; and

(ii) The retail establishment does not normally make a restroom available to the public; and

(b)(i) The employee restroom is reasonably safe and is not located in an area where providing access would create an obvious health or safety risk to the customer; or

(ii) Allowing the customer to access the employee restroom does not pose a security risk to the retail establishment or its employees.

(4) The department of health shall develop a standard electronic form that may be signed by a health care provider as evidence of the existence of an eligible medical condition as required by subsection (2) of this section. The form shall include a brief description of a customer's rights under this section and shall be made available for a customer or his or her health care provider to access by computer. Nothing in this section requires the department to distribute printed versions of the form.

(5) Fraudulent use of a form as evidence of the existence of an eligible medical condition is a misdemeanor punishable under RCW 9A.20.010.

(6) For a first violation of this section, the city or county attorney shall issue a warning letter to the owner or operator of the retail establishment, and to any employee of a retail establishment who denies access to an employee restroom in violation of this section, informing the owner or operator of the establishment and employee of the requirements of this section. A retail establishment or an employee of a retail establishment that violates this section after receiving a warning letter is guilty of a class 2 civil infraction under chapter 7.80 RCW.

(7) A retail establishment is not required to make any physical changes to an employee restroom under this section and may require that an employee accompany a customer or a customer with an eligible medical condition to the employee restroom.

(8) A retail establishment or an employee of a retail establishment is not civilly liable for any act or omission in allowing a customer or a customer with an eligible medical condition to use an employee restroom if the act or omission meets all of the following:

(a) It is not willful or grossly negligent;

(b) It occurs in an area of the retail establishment that is not accessible to the public; and

(c) It results in an injury to or death of the customer or the customer with an eligible medical condition or any individual other than an employee accompanying the customer or the customer with an eligible medical condition. [2009 c 438 § 1.]

70.54.410 Unintended pregnancies—Sexual health education funding. (1) To reduce unintended pregnancies, state agencies may apply for sexual health education funding for programs that are medically and scientifically accurate, including, but not limited to, programs on abstinence, the prevention of sexually transmitted diseases, and the prevention of unintended pregnancies. The state shall ensure that such programs:

(a) Are evidence-based;

(b) Use state funds cost-effectively;

(c) Maximize the use of federal matching funds; and

(d) Are consistent with RCW 28A.300.475, the state's healthy youth act, as existing on July 26, 2009.

(2) As used in this section:

(a) "Medically and scientifically accurate" has the same meaning as in RCW 28A.300.475, as existing on July 26, 2009; and

(b) "Evidence-based" means a program that uses practices proven to the greatest extent possible through research in compliance with scientific methods to be effective and beneficial for the target population. [2009 c 303 § 1.]

Chapter 70.56 RCW

ADVERSE HEALTH EVENTS AND INCIDENT REPORTING SYSTEM

Sections

70.56.020 Notification of adverse health events—Notification and report required—Rules.
70.56.030 Department of health—Duties—Rules.
70.56.040 Contract with independent entity—Duties of independent entity—Establishment of notification and reporting system—Annual reports to governor, legislature.

70.56.020 Notification of adverse health events—Notification and report required—Rules. (1) The legislature intends to establish an adverse health events and incident notification and reporting system that is designed to facilitate quality improvement in the health care system, improve patient safety, assist the public in making informed health care choices, and decrease medical errors in a nonpunitive manner. The notification and reporting system shall not be designed to punish errors by health care practitioners or health care facility employees.

(2) When a medical facility confirms that an adverse event has occurred, it shall submit to the department of health:

(a) Notification of the event, with the date, type of adverse event, and any additional contextual information the facility chooses to provide, within forty-eight hours; and

(b) A report regarding the event within forty-five days.

The notification and report shall be submitted to the department using the internet-based system established under RCW 70.56.040(2) if the system is operational.

(c) A medical facility may amend the notification or report within sixty days of the submission.

(3) The notification and report shall be filed in a format specified by the department after consultation with medical facilities and the independent entity if an independent entity has been contracted for under RCW 70.56.040(1). The format shall identify the facility, but shall not include any identifying information for any of the health care professionals, facility employees, or patients involved. This provision does not modify the duty of a hospital to make a report to the department of health or a disciplinary authority if a licensed practitioner has committed unprofessional conduct as defined in RCW 18.130.180.

(4) As part of the report filed under subsection (2)(b) of this section, the medical facility must conduct a root cause analysis of the event, describe the corrective action plan that will be implemented consistent with the findings of the analysis, or provide an explanation of any reasons for not taking corrective action. The department shall adopt rules, in consultation with medical facilities and the independent entity if an independent entity has been contracted for under RCW 70.56.040(1), related to the form and content of the root cause analysis and corrective action plan. In developing the rules, consideration shall be given to existing standards for root cause analysis or corrective action plans adopted by the joint commission on accreditation of health facilities and other national or governmental entities.

(5) If, in the course of investigating a complaint received from an employee of a medical facility, the department determines that the facility has not provided notification of an adverse event or undertaken efforts to investigate the occurrence of an adverse event, the department shall direct the facility to provide notification or to undertake an investigation of the event.

(6) The protections of RCW 43.70.075 apply to notifications of adverse events that are submitted in good faith by

employees of medical facilities. [2009 c 495 § 12; 2008 c 136 § 1; 2006 c 8 § 106.]

Effective date—2009 c 495: See note following RCW 43.20.050.

70.56.030 Department of health—Duties—Rules. (1) The department shall:

(a) Receive and investigate, where necessary, notifications and reports of adverse events, including root cause analyses and corrective action plans submitted as part of reports, and communicate to individual facilities the department's conclusions, if any, regarding an adverse event reported by a facility; and

(b) Adopt rules as necessary to implement this chapter.

(2) The department may enforce the reporting requirements of RCW 70.56.020 using its existing enforcement authority provided in chapter 18.46 RCW for childbirth centers, chapter 70.41 RCW for hospitals, and chapter 71.12 RCW for psychiatric hospitals. [2009 c 495 § 13; 2009 c 488 § 1; 2007 c 259 § 13; 2006 c 8 § 107.]

Reviser's note: This section was amended by 2009 c 488 § 1 and by 2009 c 495 § 13, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2009 c 495: See note following RCW 43.20.050.

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

70.56.040 Contract with independent entity—Duties of independent entity—Establishment of notification and reporting system—Annual reports to governor, legislature. (1) To the extent funds are appropriated specifically for this purpose, the department shall contract with a qualified, independent entity to receive notifications and reports of adverse events and incidents, and carry out the activities specified in this section. In establishing qualifications for, and choosing the independent entity, the department shall strongly consider the patient safety organization criteria included in the federal patient safety and quality improvement act of 2005, P.L. 109-41, and any regulations adopted to implement this chapter.

(2) If an independent entity is contracted for under subsection (1) of this section, the independent entity shall:

(a) In collaboration with the department of health, establish an internet-based system for medical facilities and the health care workers of a medical facility to submit notifications and reports of adverse events and incidents, which shall be accessible twenty-four hours a day, seven days a week. The system shall be a portal to report both adverse events and incidents, and notifications and reports of adverse events shall be immediately transmitted to the department. The system shall be a secure system that protects the confidentiality of personal health information and provider and facility specific information submitted in notifications and reports, including appropriate encryption and an accurate means of authenticating the identity of users of the system. When the system becomes operational, medical facilities shall submit all notifications and reports by means of the system;

(b) Collect, analyze, and evaluate data regarding notifications and reports of adverse events and incidents, including the identification of performance indicators and patterns in frequency or severity at certain medical facilities or in certain regions of the state;

(c) Develop recommendations for changes in health care practices and procedures, which may be instituted for the purpose of reducing the number or severity of adverse events and incidents;

(d) Directly advise reporting medical facilities of immediate changes that can be instituted to reduce adverse events or incidents;

(e) Issue recommendations to medical facilities on a facility-specific or on a statewide basis regarding changes, trends, and improvements in health care practices and procedures for the purpose of reducing the number and severity of adverse events or incidents. Prior to issuing recommendations, consideration shall be given to the following factors: Expectation of improved quality of care, implementation feasibility, other relevant implementation practices, and the cost impact to patients, payers, and medical facilities. Statewide recommendations shall be issued to medical facilities on a continuing basis and shall be published and posted on a publicly accessible web site. The recommendations made to medical facilities under this section shall not be considered mandatory for licensure purposes unless they are adopted by the department as rules pursuant to chapter 34.05 RCW; and

(f) Monitor implementation of reporting systems addressing adverse events or their equivalent in other states and make recommendations to the governor and the legislature as necessary for modifications to this chapter to keep the system as nearly consistent as possible with similar systems in other states.

(3)(a) The independent entity shall report no later than January 1, 2008, and annually thereafter in any year that an independent entity is contracted for under subsection (1) of this section to the governor and the legislature on the activities under this chapter in the preceding year. The report shall include:

(i) The number of adverse events and incidents reported by medical facilities, in the aggregate, on a geographical basis, and a summary of actions taken by facilities in response to the adverse events or incidents;

(ii) In the aggregate, the information derived from the data collected, including any recognized trends concerning patient safety;

(iii) Recommendations for statutory or regulatory changes that may help improve patient safety in the state; and

(iv) Information, presented in the aggregate, to inform and educate consumers and providers, on best practices and prevention tools that medical facilities are implementing to prevent adverse events as well as other patient safety initiatives medical facilities are undertaking to promote patient safety.

(b) The annual report shall be made available for public inspection and shall be posted on the department's and the independent entity's web site.

(4) The independent entity shall conduct all activities under this section in a manner that preserves the confidentiality of facilities, documents, materials, or information made confidential by RCW 70.56.050.

(5) Medical facilities and health care workers may provide notification of incidents to the independent entity. The notification shall be filed in a format specified by the inde-

pendent entity, after consultation with the department and medical facilities, and shall identify the facility but shall not include any identifying information for any of the health care professionals, facility employees, or patients involved. This provision does not modify the duty of a hospital to make a report to the department or a disciplinary authority if a licensed practitioner has committed unprofessional conduct as defined in RCW 18.130.180. The protections of RCW 43.70.075 apply to notifications of incidents that are submitted in good faith by employees of medical facilities. [2009 c 495 § 14; 2008 c 136 § 2; 2006 c 8 § 108.]

Effective date—2009 c 495: See note following RCW 43.20.050.

Chapter 70.58 RCW
VITAL STATISTICS

Sections

70.58.005 Definitions.
70.58.055 Certificates generally.
70.58.170 Certificate of death or fetal death—By whom filed.
70.58.180 Certificate when no physician, physician's assistant, or advanced registered nurse practitioner in attendance—Legally accepted cause of death.
70.58.230 Permits for burial, removal, etc., required—Removal to another district without permit, notice to registrar, fee.
70.58.240 Duties of funeral directors.
70.58.250 Burial-transit permit—Requisites.
70.58.260 Burial grounds—Duties of individual in charge of the premises.
70.58.400 Certificate of death—Presence of methicillin-resistant staphylococcus aureus (MRSA).
70.58.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. *(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*

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

(1) "Business days" means Monday through Friday except official state holidays.

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

(3) "Electronic approval" or "electronically approve" means approving the content of an electronically filed vital record through the processes provided by the department. Electronic approval processes shall be consistent with policies, standards, and procedures developed by the information services board under RCW 43.105.041.

(4) "Embalmer" means a person licensed as required in chapter 18.39 RCW and defined in RCW 18.39.010.

(5) "Funeral director" means a person licensed as required in chapter 18.39 RCW and defined in RCW 18.39.010.

(6) "Vital records" means records of birth, death, fetal death, marriage, dissolution, annulment, and legal separation, as maintained under the supervision of the state registrar of vital statistics. [2009 c 231 § 1; 2005 c 365 § 151; 1991 c 3 § 342; 1987 c 223 § 1.]

70.58.055 Certificates generally. (1) To promote and maintain nationwide uniformity in the system of vital statistics, the certificates required by this chapter or by the rules adopted under this chapter shall include, as a minimum, the items recommended by the federal agency responsible for national vital statistics including social security numbers.

(2)(a) The state board of health by rule may require additional pertinent information relative to the birth and manner of delivery as it may deem necessary for statistical study. This information shall be placed in a confidential section of the birth certificate form and shall not be used for certification, nor shall it be subject to the view of the public except as provided in (b) of this subsection. The state board of health may eliminate from the forms items that it determines are not necessary for statistical study.

(b) Information contained in the confidential section of the birth certificate form may only be available for review by:

(i) A member of the public upon order of the court; or

(ii) The individual who is the subject of the birth certificate upon confirmation of the identity of the requestor in a manner approved by the state board of health. Confidential information provided to the individual who is the subject of the birth certificate shall be limited to information on the child and shall not include information on the mother or father.

(3) Each certificate or other document required by this chapter shall be on a form or in a format prescribed by the state registrar.

(4) All vital records shall contain the data required for registration. No certificate may be held to be complete and correct that does not supply all items of information called for or that does not satisfactorily account for the omission of required items.

(5) Information required in certificates or documents authorized by this chapter may be filed and registered by photographic, electronic, or other means as prescribed by the state registrar. [2009 c 44 § 1; 1997 c 58 § 948; 1991 c 96 § 1.]

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

70.58.170 Certificate of death or fetal death—By whom filed. The funeral director or person having the right to control the disposition of the human remains under RCW 68.50.160 shall file the certificate of death or fetal death. In preparing such certificate, the funeral director or person having the right to control the disposition of the human remains under RCW 68.50.160 shall obtain and enter on the certificate such personal data as the certificate requires from the person or persons best qualified to supply them. He or she shall present the certificate of death to the physician, physician's assistant, or advanced registered nurse practitioner last in attendance upon the deceased, or, if the deceased died without medical attendance, to the health officer, medical examiner, coroner, or prosecuting attorney having jurisdiction, who shall certify the cause of death according to his or her best knowledge and belief and shall sign or electronically approve the certificate of death or fetal death within two business days after being presented with the certificate unless good cause for not signing or electronically approving the certificate within the two business days can be established. He or she shall present the certificate of fetal death to the physician, physician's assistant, advanced registered nurse practitioner, midwife, or other person in attendance at the fetal death, who shall certify the fetal death and such medical data

pertaining thereto as he or she can furnish. [2009 c 231 § 2; 2005 c 365 § 154; 2000 c 133 § 1; 1979 ex.s. c 162 § 1; 1961 ex.s. c 5 § 13; 1945 c 159 § 2; Rem. Supp. 1945 § 6024-2.]

70.58.180 Certificate when no physician, physician's assistant, or advanced registered nurse practitioner in attendance—Legally accepted cause of death. If the death occurred without medical attendance, the funeral director or person having the right to control the disposition of the human remains under RCW 68.50.160 shall notify the coroner, medical examiner, or prosecuting attorney if there is no coroner or medical examiner in the county. If the circumstances suggest that the death or fetal death was caused by unlawful or unnatural causes or if there is no local health officer with jurisdiction, the coroner or medical examiner, or the prosecuting attorney shall complete and sign or electronically approve the certification, noting upon the certificate that no physician, physician's assistant, or advanced registered nurse practitioner was in attendance at the time of death. In case of any death without medical attendance in which there is no suspicion of death from unlawful or unnatural causes, the local health officer or his or her deputy, the coroner or medical examiner, and if none, the prosecuting attorney, shall complete and sign or electronically approve the certification, noting upon the certificate that no physician, physician's assistant, or advanced registered nurse practitioner was in attendance at the time of death, and noting the cause of death without the holding of an inquest or performing of an autopsy or post mortem, but from statements of relatives, persons in attendance during the last sickness, persons present at the time of death or other persons having adequate knowledge of the facts.

The cause of death, the manner and mode in which death occurred, as noted by the coroner or medical examiner, or if none, the prosecuting attorney or the health officer and incorporated in the death certificate filed with the department shall be the legally accepted manner and mode by which the deceased came to his or her death and shall be the legally accepted cause of death. [2009 c 231 § 3; 2005 c 365 § 155; 2000 c 133 § 2; 1961 ex.s. c 5 § 14; 1953 c 188 § 5; 1945 c 159 § 3; Rem. Supp. 1945 § 6024-3. Prior: 1915 c 180 § 5; 1907 c 83 § 7.]

70.58.230 Permits for burial, removal, etc., required—Removal to another district without permit, notice to registrar, fee. It shall be unlawful for any person to inter, deposit in a vault, grave, or tomb, cremate, or otherwise dispose of, or disinter or remove from one registration district to another, or hold for more than three business days after death, the human remains of any person whose death occurred in this state or any human remains which shall be found in this state, without obtaining, from the local registrar of the district in which the death occurred or in which the human remains were found, a permit for the burial, disinterment, or removal of the human remains. However, a licensed funeral director or embalmer of this state or a funeral establishment licensed in another state contiguous to Washington, with a current certificate of removal registration issued by the director of the department of licensing, may remove human remains from the district where the death occurred to another registration district or Oregon or Idaho without having obtained a permit but in such cases the funeral director or embalmer shall at the time of removing human remains file with or mail to the local registrar of the district where the death occurred a notice of removal upon a blank to be furnished by the state registrar. The notice of removal shall be signed or electronically approved by the funeral director or embalmer and shall contain the name and address of the local registrar with whom the certificate of death will be filed and the burial-transit permit secured. Every local registrar, accepting a death certificate and issuing a burial-transit permit for a death that occurred outside his or her district, shall be entitled to a fee of one dollar to be paid by the funeral director or embalmer at the time the death certificate is accepted and the permit is secured. It shall be unlawful for any person to bring into or transport within the state or inter, deposit in a vault, grave, or tomb, or cremate or otherwise dispose of human remains of any person whose death occurred outside this state unless the human remains are accompanied by a removal or transit permit issued in accordance with the law and health regulations in force where the death occurred, or unless a special permit for bringing the human remains into this state shall be obtained from the state registrar. [2009 c 231 § 4; 2005 c 365 § 157; 1961 ex.s. c 5 § 16; 1915 c 180 § 3; 1907 c 83 § 4; RRS § 6021.]

Cemeteries and human remains: Title 68 RCW.

70.58.240 Duties of funeral directors. Each funeral director or person having the right to control the disposition of the human remains under RCW 68.50.160 shall obtain a certificate of death, sign or electronically approve and file the certificate with the local registrar, and secure a burial-transit permit, prior to any permanent disposition of the human remains. He or she shall obtain the personal and statistical particulars required, from the person best qualified to supply them. He or she shall present the certificate to the attending physician or in case the death occurred without any medical attendance, to the proper official for certification for the medical certificate of the cause of death and other particulars necessary to complete the record. He or she shall supply the information required relative to the date and place of disposition and he or she shall sign or electronically approve and present the completed certificate to the local registrar, for the issuance of a burial-transit permit. He or she shall deliver the burial permit to the sexton, or person in charge of the place of burial, before interring the human remains; or shall attach the transit permit to the box containing the corpse, when shipped by any transportation company, and the permit shall accompany the corpse to its destination. [2009 c 231 § 5; 2005 c 365 § 158; 1961 ex.s. c 5 § 17; 1915 c 180 § 6; 1907 c 83 § 8; RRS § 6025.]

70.58.250 Burial-transit permit—Requisites. The burial-transit permit shall contain a statement by the local registrar and over his or her signature or electronic approval, that a satisfactory certificate of death having been filed with him or her, as required by law, permission is granted to inter, remove, or otherwise dispose of the body; stating the name of the deceased and other necessary details upon the form pre-

scribed by the state registrar. [2009 c 231 § 6; 1961 ex.s. c 5 § 18; 1907 c 83 § 9; RRS § 6026.]

70.58.260 Burial grounds—Duties of individual in charge of the premises. It shall be unlawful for any person in charge of any premises in which bodies of deceased persons are interred, cremated, or otherwise permanently disposed of, to permit the interment, cremation, or other disposition of any body upon such premises unless it is accompanied by a burial, removal, or transit permit as provided in this chapter. It shall be the duty of the person in charge of any such premises to, in case of the interment, cremation, or other disposition of human remains therein, endorse upon the permit the date and character of such disposition, over his or her signature or electronic approval, to return all permits so endorsed to the local registrar of the district in which the death occurred within ten days from the date of such disposition, and to keep a record of all human remains disposed of on the premises under his or her charge, stating, in each case, the name of the deceased person, if known, the place of death, the date of burial or other disposition, and the name and address of the undertaker, which record shall at all times be open to public inspection, and it shall be the duty of every undertaker, or person acting as such, when burying human remains in a cemetery or burial grounds having no person in charge, to sign or electronically approve the burial, removal, or transit permit, giving the date of burial, write across the face of the permit the words "no person in charge", and file the burial, removal, or transit permit within ten days with the registrar of the district in which the death occurred. [2009 c 231 § 7; 2005 c 365 § 159; 1915 c 180 § 7; 1907 c 83 § 10; RRS § 6027.]

70.58.400 Certificate of death—Presence of methicillin-resistant staphylococcus aureus (MRSA). In completing a certificate of death in compliance with this chapter, a physician, physician assistant, or advanced registered nurse practitioner must note the presence of methicillin-resistant staphylococcus aureus, if it is a cause or contributing factor in the patient's death. [2009 c 244 § 3.]

70.58.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. ***(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 153.]

Chapter 70.74 RCW
WASHINGTON STATE EXPLOSIVES ACT

Sections

70.74.360 Licenses—Fingerprint and criminal record checks—Fee—Licenses prohibited for certain persons—License fees.

70.74.360 Licenses—Fingerprint and criminal record checks—Fee—Licenses prohibited for certain persons—License fees. (1) The director of labor and industries shall require, as a condition precedent to the original issuance and upon renewal every three years thereafter of any explosive license, fingerprinting and criminal history record information checks of every applicant. In the case of a corporation, fingerprinting and criminal history record information checks shall be required for the management officials directly responsible for the operations where explosives are used if such persons have not previously had their fingerprints recorded with the department of labor and industries. In the case of a partnership, fingerprinting and criminal history record information checks shall be required of all general partners. Such fingerprints as are required by the department of labor and industries shall be submitted on forms provided by the department to the identification section of the Washington state patrol and to the identification division of the federal bureau of investigation in order that these agencies may search their records for prior convictions of the individuals fingerprinted. The Washington state patrol shall provide to the director of labor and industries such criminal record information as the director may request. The applicant shall give full cooperation to the department of labor and industries and shall assist the department of labor and industries in all aspects of the fingerprinting and criminal history record information check. The applicant shall be required to pay the current federal and state fee for fingerprint-based criminal history background checks.

(2) The director of labor and industries shall not issue a license to manufacture, purchase, store, use, or deal with explosives to:

(a) Any person under twenty-one years of age;

(b) Any person whose license is suspended or whose license has been revoked, except as provided in RCW 70.74.370;

(c) Any person who has been convicted in this state or elsewhere of a violent offense as defined in RCW 9.94A.030, perjury, false swearing, or bomb threats or a crime involving a schedule I or II controlled substance, or any other drug or alcohol related offense, unless such other drug or alcohol related offense does not reflect a drug or alcohol dependency. However, the director of labor and industries may issue a license if the person suffering a drug or alcohol related dependency is participating in or has completed an alcohol or drug recovery program acceptable to the department of labor and industries and has established control of their alcohol or drug dependency. The director of labor and industries shall require the applicant to provide proof of such participation and control; or

(d) Any person who has previously been adjudged to be mentally ill or insane, or to be incompetent due to any mental disability or disease and who has not at the time of application been restored to competency.

(3) The director of labor and industries may establish reasonable licensing fees for the manufacture, dealing, purchase, use, and storage of explosives. [2009 c 39 § 1; 2008 c 285 § 10; 1988 c 198 § 3.]

Intent—Captions not law—Effective date—2008 c 285: See notes following RCW 43.22.434.

Chapter 70.79 RCW
BOILERS AND UNFIRED PRESSURE VESSELS

Sections

70.79.060 Construction, installation must conform to rules—Inspection certificate.
70.79.070 Existing installations—Conformance required—Miniature hobby boilers.
70.79.080 Exemptions from chapter.
70.79.090 Exemptions from certain provisions.
70.79.210 Repealed.
70.79.240 Inspection of boilers, unfired pressure vessels—Scope—Frequency.

70.79.060 Construction, installation must conform to rules—Inspection certificate. (1) Except as provided in subsection (2) of this section, no power boiler, low pressure boiler, or unfired pressure vessel which does not conform to the rules and regulations formulated by the board governing new construction and installation shall be installed and operated in this state after twelve months from the date upon which the first rules and regulations under this chapter pertaining to new construction and installation shall have become effective, unless the boiler or unfired pressure vessel is of special design or construction, and is not covered by the rules and regulations, nor is in any way inconsistent with such rules and regulations, in which case an inspection certificate may at its discretion be granted by the board.

(2) An inspection certificate may also be granted for boilers and pressure vessels manufactured before 1951 which do not comply with the code requirements of the American Society of Mechanical Engineers adopted under this chapter, if the boiler or pressure vessel is operated exclusively for the purposes of public exhibition, and the board finds, upon inspection, that operation of the boiler or pressure vessel for such purposes is not unsafe. [2009 c 90 § 1; 1984 c 93 § 1; 1951 c 32 § 6.]

70.79.070 Existing installations—Conformance required—Miniature hobby boilers. (1) All boilers and unfired pressure vessels which were in use, or installed ready for use in this state prior to the date upon which the first rules and regulations under this chapter pertaining to existing installations became effective, or during the twelve months period immediately thereafter, shall be made to conform to the rules and regulations of the board governing existing installations, and the formulae prescribed therein shall be used in determining the maximum allowable working pressure for such boilers and unfired pressure vessels.

(2) This chapter shall not be construed as in any way preventing the use or sale of boilers or unfired vessels as referred to in subsection (1) of this section, provided they have been made to conform to the rules and regulations of the board governing existing installations, and provided, further, they have not been found upon inspection to be in an unsafe condition.

(3) An inspection certificate may also be granted for miniature hobby boilers that do not comply with the code requirements of the American society of mechanical engineers adopted under this chapter and do not exceed any of the following limits:

(a) Sixteen inches inside diameter of the shell;

(b) Twenty square feet of total heating surface;

(c) Five cubic feet of gross volume of vessel; and

(d) One hundred fifty p.s.i.g. maximum allowable working pressure, and if the boiler is to be operated exclusively not for commercial or industrial use and the department of labor and industries finds, upon inspection, that operation of the boiler for such purposes is not unsafe. [2009 c 90 § 2; 1995 c 41 § 1; 1993 c 193 § 1; 1951 c 32 § 7.]

70.79.080 Exemptions from chapter. This chapter shall not apply to the following boilers, unfired pressure vessels and domestic hot water tanks:

(1) Boilers and unfired pressure vessels under federal regulation or operated by any railroad subject to the provisions of the interstate commerce act;

(2) Unfired pressure vessels meeting the requirements of the interstate commerce commission for shipment of liquids or gases under pressure;

(3) Air tanks located on vehicles operating under the rules of other state authorities and used for carrying passengers, or freight;

(4) Air tanks installed on the right-of-way of railroads and used directly in the operation of trains;

(5) Unfired pressure vessels having a volume of five cubic feet or less when not located in places of public assembly;

(6) Unfired pressure vessels designed for a pressure not exceeding fifteen pounds per square inch gauge;

(7) Tanks used in connection with heating water for domestic and/or residential purposes;

(8) Boilers and unfired pressure vessels in cities having ordinances which are enforced and which have requirements equal to or higher than those provided for under this chapter, covering the installation, operation, maintenance and inspection of boilers and unfired pressure vessels;

(9) Tanks containing water with no air cushion and no direct source of energy that operate at ambient temperature;

(10) Electric boilers:

(a) Having a tank volume of not more than one and one-half cubic feet;

(b) Having a maximum allowable working pressure of one hundred pounds per square inch or less, with a pressure relief system to prevent excess pressure; and

(c) If constructed after June 10, 1994, constructed to American society of mechanical engineers code, or approved or otherwise certified by a nationally recognized or recognized foreign testing laboratory or construction code, including but not limited to Underwriters Laboratories, Edison Testing Laboratory, or Instituto Superiore Per La Prevenzione E La Sicurezza Del Lavoro;

(11) Electrical switchgear and control apparatus that have no external source of energy to maintain pressure and

are located in restricted access areas under the control of an electric utility;

(12) Regardless of location, unfired pressure vessels less than one and one-half cubic feet (11.25 gallons) in volume or less than six inches in diameter with no limitation on the length of the vessel or pressure;

(13) Domestic hot water heaters less than one and one-half cubic feet (11.25 gallons) in volume with a safety valve setting of one hundred fifty pounds per square inch gauge or less. [2009 c 90 § 3; 2005 c 22 § 1; 1999 c 183 § 3; 1996 c 72 § 1; 1994 c 64 § 2; 1986 c 97 § 1; 1951 c 32 § 8.]

Finding—Intent—1994 c 64: See note following RCW 70.79.095.

70.79.090 Exemptions from certain provisions. The following boilers and unfired pressure vessels shall be exempt from the requirements of RCW 70.79.220 and 70.79.240 through 70.79.330:

(1) Boilers or unfired pressure vessels located on farms and used solely for agricultural purposes;

(2) Unfired pressure vessels that are part of fertilizer applicator rigs designed and used exclusively for fertilization in the conduct of agricultural operations;

(3) Steam boilers used exclusively for heating purposes carrying a pressure of not more than fifteen pounds per square inch gauge and which are located in private residences or in apartment houses of less than six families;

(4) Hot water heating boilers carrying a pressure of not more than thirty pounds per square inch and which are located in private residences or in apartment houses of less than six families;

(5) Approved pressure vessels (hot water heaters, hot water storage tanks, hot water supply boilers, and hot water heating boilers listed by a nationally recognized testing agency), with approved safety devices including a pressure relief valve, with a nominal water containing capacity of one hundred twenty gallons or less having a heat input of two hundred thousand b.t.u.'s per hour or less, at pressure of one hundred sixty pounds per square inch or less, and at temperatures of two hundred ten degrees Fahrenheit or less: PROVIDED, HOWEVER, That such pressure vessels are not installed in schools, child care centers, public and private hospitals, nursing and boarding homes, churches, public buildings owned or leased and maintained by the state or any political subdivision thereof, and assembly halls;

(6) Unfired pressure vessels containing only water under pressure for domestic supply purposes, including those containing air, the compression of which serves only as a cushion or airlift pumping systems, when located in private residences or in apartment houses of less than six families, or in public water systems as defined in RCW 70.119.020;

(7) Unfired pressure vessels containing liquified petroleum gases. [2009 c 90 § 4; 2005 c 22 § 2; 1999 c 183 § 4; 1988 c 254 § 20; 1983 c 3 § 174; 1972 ex.s. c 86 § 2; 1951 c 32 § 9.]

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

70.79.240 Inspection of boilers, unfired pressure vessels—Scope—Frequency. Each boiler and unfired pressure vessel used or proposed to be used within this state, except boilers or unfired pressure vessels exempt in RCW 70.79.080 and 70.79.090, shall be thoroughly inspected as to their construction, installation, condition and operation, as follows:

(1) Power boilers shall be inspected annually both internally and externally while not under pressure, except that the board may provide for longer periods between inspections where the contents, history, or operation of the power boiler or the material of which it is constructed warrant special consideration. Power boilers shall also be inspected annually externally while under pressure if possible;

(2) Low pressure heating boilers shall be inspected both internally and externally biennially where construction will permit, except that the board may, in its discretion, provide for longer periods between internal inspections;

(3) Unfired pressure vessels subject to internal corrosion shall be inspected both internally and externally biennially where construction will permit, except that the board may, in its discretion, provide for longer periods between internal inspections;

(4) Unfired pressure vessels not subject to internal corrosion shall be inspected externally at intervals set by the board, but internal inspections shall not be required of unfired pressure vessels, the contents of which are known to be noncorrosive to the material of which the shell, head, or fittings are constructed, either from the chemical composition of the contents or from evidence that the contents are adequately treated with a corrosion inhibitor, provided that such vessels are constructed in accordance with the rules and regulations of the board or in accordance with standards substantially equivalent to the rules and regulations of the board, in effect at the time of manufacture. [2009 c 90 § 5; 1993 c 391 § 1; 1951 c 32 § 22.]

Chapter 70.87 RCW

ELEVATORS, LIFTING DEVICES, AND MOVING WALKS

Sections

70.87.010 Definitions.
70.87.200 Exemptions.
70.87.230 Conveyance work—Who may perform—Possession of license and identification.
70.87.250 Licenses—Renewals—Fees—Temporary licenses—Continuing education—Records.

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

(1) "Advisory committee" means the elevator advisory committee as described in this chapter.

(2) "Alteration" means any change to equipment, including its parts, components, and/or subsystems, other than maintenance, repair, or replacement.

(3) "Automobile parking elevator" means an elevator: (a) Located in either a stationary or horizontally moving hoistway; (b) used exclusively for parking automobiles where, during the parking process, each automobile is moved either under its own power or by means of a power-driven transfer device onto and off the elevator directly into parking spaces or cubicles in line with the elevator; and (c) in which

persons are not normally stationed on any level except the receiving level.

(4) "Belt manlift" means a power driven endless belt provided with steps or platforms and a hand hold for the transportation of personnel from floor to floor.

(5) "Casket lift" means a lift that (a) is installed at a mortuary, (b) is designed exclusively for carrying of caskets, (c) moves in guides in a basically vertical direction, and (d) serves two or more floors or landings.

(6) "Conveyance" means an elevator, escalator, dumbwaiter, belt manlift, automobile parking elevator, moving walk, and other elevating devices, as defined in this section.

(7) "Conveyance work" means the alteration, construction, dismantling, erection, installation, maintenance, relocation, and wiring of a conveyance.

(8) "Department" means the department of labor and industries.

(9) "Director" means the director of the department or his or her representative.

(10) "Dumbwaiter" means a hoisting and lowering mechanism equipped with a car (a) that moves in guides in a substantially vertical direction, (b) the floor area of which does not exceed nine square feet, (c) the inside height of which does not exceed four feet, (d) the capacity of which does not exceed five hundred pounds, and (e) that is used exclusively for carrying materials.

(11) "Elevator" means a hoisting or lowering machine equipped with a car or platform that moves in guides and serves two or more floors or landings of a building or structure;

(a) "Passenger elevator" means an elevator (i) on which passengers are permitted to ride and (ii) that may be used to carry freight or materials when the load carried does not exceed the capacity of the elevator;

(b) "Freight elevator" means an elevator (i) used primarily for carrying freight and (ii) on which only the operator, the persons necessary for loading and unloading, and other employees approved by the department are permitted to ride;

(c) "Sidewalk elevator" means a freight elevator that: (i) Operates between a sidewalk or other area outside the building and floor levels inside the building below the outside area, (ii) does not have a landing opening into the building at its upper limit of travel, and (iii) is not used to carry automobiles;

(d) "Hand elevator" means an elevator utilizing manual energy to move the car;

(e) "Inclined elevator" means an elevator that travels at an angle of inclination of seventy degrees or less from the horizontal;

(f) "Multideck elevator" means an elevator having two or more compartments located one immediately above the other;

(g) "Observation elevator" means an elevator designed to permit exterior viewing by passengers while the car is traveling;

(h) "Power elevator" means an elevator utilizing energy other than gravitational or manual to move the car;

(i) "Electric elevator" means an elevator where the energy is applied by means of an electric driving machine;

(j) "Hydraulic elevator" means an elevator where the energy is applied by means of a liquid under pressure in a cylinder equipped with a plunger or piston;

(k) "Direct-plunger hydraulic elevator" means a hydraulic elevator having a plunger or cylinder directly attached to the car frame or platform;

(l) "Electro-hydraulic elevator" means a direct-plunger elevator where liquid is pumped under pressure directly into the cylinder by a pump driven by an electric motor;

(m) "Maintained-pressure hydraulic elevator" means a direct-plunger elevator where liquid under pressure is available at all times for transfer into the cylinder;

(n) "Roped hydraulic elevator" means a hydraulic elevator having its plunger or piston connected to the car with wire ropes or indirectly coupled to the car by means of wire ropes and sheaves;

(o) "Rack and pinion elevator" means a power elevator, with or without a counterweight, that is supported, raised, and lowered by a motor or motors that drive a pinion or pinions on a stationary rack mounted in the hoistway;

(p) "Screw column elevator" means a power elevator having an uncounterweighted car that is supported, raised, and lowered by means of a screw thread;

(q) "Rooftop elevator" means a power passenger or freight elevator that operates between a landing at roof level and one landing below and opens onto the exterior roof level of a building through a horizontal opening;

(r) "Special purpose personnel elevator" means an elevator that is limited in size, capacity, and speed, and permanently installed in structures such as grain elevators, radio antenna, bridge towers, underground facilities, dams, power plants, and similar structures to provide vertical transportation of authorized personnel and their tools and equipment only;

(s) "Workmen's construction elevator" means an elevator that is not part of the permanent structure of a building and is used to raise and lower workers and other persons connected with, or related to, the building project;

(t) "Boat launching elevator" means a conveyance that serves a boat launching structure and a beach or water surface and is used for the carrying or handling of boats in which people ride;

(u) "Limited-use/limited-application elevator" means a power passenger elevator where the use and application is limited by size, capacity, speed, and rise, intended principally to provide vertical transportation for people with physical disabilities.

(12) "Elevator contractor" means any person, firm, or company that possesses an elevator contractor license in accordance with this chapter and who is engaged in the business of performing conveyance work covered by this chapter.

(13) "Elevator contractor license" means a license that is issued to an elevator contractor who has met the qualification requirements established in RCW 70.87.240.

(14) "Elevator helper/apprentice" means a person who works under the general direction of a licensed elevator mechanic. A license is not required to be an elevator helper/apprentice.

(15) "Elevator mechanic" means any person who possesses an elevator mechanic license in accordance with this

chapter and who is engaged in performing conveyance work covered by this chapter.

(16) "Elevator mechanic license" means a license that is issued to a person who has met the qualification requirements established in RCW 70.87.240.

(17) "Escalator" means a power-driven, inclined, continuous stairway used for raising and lowering passengers.

(18) "Existing installations" means an installation defined as an "installation, existing" in this chapter or in rules adopted under this chapter.

(19) "Inspector" means an elevator inspector of the department or an elevator inspector of a municipality having in effect an elevator ordinance pursuant to RCW 70.87.200.

(20) "License" means a written license, duly issued by the department, authorizing a person, firm, or company to carry on the business of performing conveyance work or to perform conveyance work covered by this chapter.

(21) "Licensee" means the elevator mechanic or elevator contractor.

(22) "Maintenance" means a process of routine examination, lubrication, cleaning, servicing, and adjustment of parts, components, and/or subsystems for the purpose of ensuring performance in accordance with this chapter. "Maintenance" includes repair and replacement, but not alteration.

(23) "Material hoist" means a hoist that is not a part of a permanent structure used to raise or lower materials during construction, alteration, or demolition. It is not applicable to the temporary use of permanently installed personnel elevators as material hoists.

(24) "Material lift" means a lift that (a) is permanently installed, (b) is comprised of a car or platform that moves in guides, (c) serves two or more floors or landings, (d) travels in a vertical or inclined position, (e) is an isolated, self-contained lift, (f) is not part of a conveying system, and (g) is installed in a commercial or industrial area not accessible to the general public or intended to be operated by the general public.

(25) "Moving walk" means a passenger carrying device (a) on which passengers stand or walk and (b) on which the passenger carrying surface remains parallel to its direction of motion.

(26) "One-man capacity manlift" means a single passenger, hand-powered counterweighted device, or electric-powered device, that travels vertically in guides and serves two or more landings.

(27) "Owner" means any person having title to or control of a conveyance, as guardian, trustee, lessee, or otherwise.

(28) "Permit" means a permit issued by the department: (a) To perform conveyance work, other than maintenance; or (b) to operate a conveyance.

(29) "Person" means this state, a political subdivision, any public or private corporation, any firm, or any other entity as well as an individual.

(30) "Personnel hoist" means a hoist that is not a part of a permanent structure, is installed inside or outside buildings during construction, alteration, or demolition, and used to raise or lower workers and other persons connected with, or related to, the building project. The hoist may also be used for transportation of materials.

(31) "Platform" means a rigid surface that is maintained in a horizontal position at all times when in use, and upon which passengers stand or a load is carried.

(32) "Private residence conveyance" means a conveyance installed in or on the premises of a single-family dwelling and operated for transporting persons or property from one elevation to another.

(33) "Public agency" means a county, incorporated city or town, municipal corporation, state agency, institution of higher education, political subdivision, or other public agency and includes any department, bureau, office, board, commission or institution of such public entities.

(34) "Repair" means the reconditioning or renewal of parts, components, and/or subsystems necessary to keep equipment in compliance with this chapter.

(35) "Replacement" means the substitution of a device, component, and/or subsystem in its entirety with a unit that is basically the same as the original for the purpose of ensuring performance in accordance with this chapter.

(36) "Single-occupancy farm conveyance" means a hand-powered counterweighted single-occupancy conveyance that travels vertically in a grain elevator and is located on a farm that does not accept commercial grain.

(37) "Stairway chair lift" means a lift that travels in a basically inclined direction and is designed for use by individuals with disabilities.

(38) "Wheelchair lift" means a lift that travels in a vertical or inclined direction and is designed for use by individuals with disabilities. [2009 c 128 § 1; 2003 c 143 § 9; 2002 c 98 § 1; 1998 c 137 § 1; 1997 c 216 § 1; 1983 c 123 § 1; 1973 1st ex.s. c 52 § 9; 1969 ex.s. c 108 § 1; 1963 c 26 § 1.]

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

Part headings and captions not law—Effective date—2003 c 143: See notes following RCW 70.87.020.

Effective date—1973 1st ex.s. c 52: See note following RCW 43.22.010.

70.87.200 Exemptions. (1) The provisions of this chapter do not apply where:

(a) A conveyance is permanently removed from service or made effectively inoperative;

(b) Lifts, hoists for persons, or material hoists are erected temporarily for use during construction work only and are of such a design that they must be operated by a worker stationed at the hoisting machine; or

(c) A single-occupancy farm conveyance is used exclusively by a farm operator and the farm operator's family members.

(2) Except as limited by RCW 70.87.050, municipalities having in effect an elevator code prior to June 13, 1963, may continue to assume jurisdiction over conveyance work and may inspect, issue permits, collect fees, and prescribe minimum requirements for conveyance work and operation if the requirements are equal to the requirements of this chapter and to all rules pertaining to conveyances adopted and administered by the department. Upon the failure of a municipality having jurisdiction over conveyances to carry out the provisions of this chapter with regard to a conveyance, the department may assume jurisdiction over the conveyance. If a municipality elects not to maintain jurisdiction over certain

conveyances located therein, it may enter into a written agreement with the department transferring exclusive jurisdiction of the conveyances to the department. The city may not reassume jurisdiction after it enters into such an agreement with the department. [2009 c 549 § 1025; 2009 c 128 § 2; 2003 c 143 § 20; 1983 c 123 § 22; 1969 ex.s. c 108 § 4; 1963 c 26 § 20.]

Reviser's note: This section was amended by 2009 c 128 § 2 and by 2009 c 549 § 1025, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Part headings and captions not law—Effective date—2003 c 143: See notes following RCW 70.87.020.

70.87.230 Conveyance work—Who may perform—Possession of license and identification. (1) Except as provided in RCW 70.87.270, a person may not perform conveyance work within the state unless he or she is an elevator mechanic who is regularly employed by and is working: (a) For an owner exempt from licensing requirements under RCW 70.87.270 and performing maintenance; (b) for a public agency performing maintenance; or (c) under the direct supervision of an elevator contractor. A person, firm, public agency, or company is not required to be an elevator contractor for removing or dismantling conveyances that are destroyed as a result of a complete demolition of a secured building or structure or where the building is demolished back to the basic support structure whereby no access is permitted therein to endanger the safety and welfare of a person.

(2) When performing conveyance work, an elevator mechanic must have his or her license and photo identification in his or her possession. The elevator mechanic must produce his or her license and identification upon request of an authorized representative of the department. The department may establish by rule a requirement that the mechanic also wear and visibly display his or her license. [2009 c 36 § 10; 2003 c 143 § 1; 2002 c 98 § 10.]

Finding—Intent—2009 c 36: See note following RCW 18.106.020.

Part headings and captions not law—Effective date—2003 c 143: See notes following RCW 70.87.020.

70.87.250 Licenses—Renewals—Fees—Temporary licenses—Continuing education—Records. (1) Upon approval of an application, the department may issue a license that is biennially renewable. Each license may include a photograph of the licensee. The fee for the license and for any renewal shall be set by the department in rule.

(2) The department may issue temporary elevator mechanic licenses. These temporary elevator mechanic licenses will be issued to those certified as qualified and competent by licensed elevator contractors. The company shall furnish proof of competency as the department may require. Each license may include a photograph of the licensee. Each license must recite that it is valid for a period of thirty days from the date of issuance and for such particular conveyance or geographical areas as the department may designate, and otherwise entitles the licensee to the rights and privileges of an elevator mechanic license issued in this chapter. A temporary elevator mechanic license may be renewed by the department and a fee as established in rule must be charged for any temporary elevator mechanic license or renewal.

(3) The renewal of all licenses granted under this section is conditioned upon the submission of a certificate of completion of a course designed to ensure the continuing education of licensees on new and existing rules of the department. The course must consist of not less than eight hours of instruction that must be attended and completed within one year immediately preceding any license renewal.

(4) The courses must be taught by instructors through continuing education providers that may include, but are not limited to, association seminars and labor training programs. The department must approve the continuing education providers. All instructors must be approved by the department and are exempt from the requirements of subsection (3) of this section with regard to his or her application for license renewal, provided that such applicant was qualified as an instructor at any time during the one year immediately preceding the scheduled date for such renewal.

(5) A licensee who is unable to complete the continuing education course required under this section before the expiration of his or her license due to a temporary disability may apply for a waiver from the department. This will be on a form provided by the department and signed under the pains and penalties of perjury and accompanied by a certified statement from a competent physician attesting to the temporary disability. Upon the termination of the temporary disability, the licensee must submit to the department a certified statement from the same physician, if practicable, attesting to the termination of the temporary disability. At which time a waiver sticker, valid for ninety days, must be issued to the licensee and affixed to his or her license.

(6) Approved training providers must keep uniform records, for a period of ten years, of attendance of licensees and these records must be available for inspection by the department at its request. Approved training providers are responsible for the security of all attendance records and certificates of completion. However, falsifying or knowingly allowing another to falsify attendance records or certificates of completion constitutes grounds for suspension or revocation of the approval required under this section. [2009 c 36 § 11; 2003 c 143 § 21; 2002 c 98 § 13.]

Finding—Intent—2009 c 36: See note following RCW 18.106.020.

Part headings and captions not law—Effective date—2003 c 143: See notes following RCW 70.87.020.

Chapter 70.93 RCW

WASTE REDUCTION, RECYCLING, AND MODEL LITTER CONTROL ACT

Sections

70.93.180 Waste reduction, recycling, and litter control account—Distribution.

70.93.180 Waste reduction, recycling, and litter control account—Distribution. (1) There is hereby created an account within the state treasury to be known as the "waste reduction, recycling, and litter control account". Moneys in the account may be spent only after appropriation. Expenditures from the waste reduction, recycling, and litter control account shall be used as follows:

(a) Fifty percent to the department of ecology, for use by the departments of ecology, natural resources, revenue, trans-

portation, and corrections, and the parks and recreation commission, for use in litter collection programs, to be distributed under RCW 70.93.220. The amount to the department of ecology shall also be used for a central coordination function for litter control efforts statewide, for the biennial litter survey under RCW 70.93.200(8), and for statewide public awareness programs under RCW 70.93.200(7). The amount to the department shall also be used to defray the costs of administering the funding, coordination, and oversight of local government programs for waste reduction, litter control, and recycling, so that local governments can apply one hundred percent of their funding to achieving program goals. The amount to the department of revenue shall be used to enforce compliance with the litter tax imposed in chapter 82.19 RCW;

(b) Twenty percent to the department for local government funding programs for waste reduction, litter control, and recycling activities by cities and counties under RCW 70.93.250, to be administered by the department of ecology; and

(c) Thirty percent to the department of ecology for waste reduction and recycling efforts.

(2) All taxes imposed in RCW 82.19.010 and fines and bail forfeitures collected or received pursuant to this chapter shall be deposited in the waste reduction, recycling, and litter control account and used for the programs under subsection (1) of this section.

(3) Not less than five percent and no more than ten percent of the amount appropriated into the waste reduction, recycling, and litter control account every biennium shall be reserved for capital needs, including the purchase of vehicles for transporting crews and for collecting litter and solid waste. Capital funds shall be distributed among state agencies and local governments according to the same criteria provided in RCW 70.93.220 for the remainder of the funds, so that the most effective waste reduction, litter control, and recycling programs receive the most funding. The intent of this subsection is to provide funds for the purchase of equipment that will enable the department to account for the greatest return on investment in terms of reaching a zero litter goal.

(4) During the 2009-2011 fiscal biennium, the legislature may transfer from the waste reduction, recycling, and litter control account to the state general fund such amounts as reflect the excess fund balance of the account. For purposes of subsection (1) of this section, this transfer shall be treated as an expenditure for litter collection. [2009 c 564 § 950; 2005 c 518 § 939; 1998 c 257 § 5; 1992 c 175 § 8; 1991 sp.s. c 13 § 40; 1985 c 57 § 68; 1983 c 277 § 3; 1971 ex.s. c 307 § 18.]

Effective date—2009 c 564: See note following RCW 2.68.020.

Severability—Effective date—2005 c 518: See notes following RCW 28A.500.030.

Effective date—1992 c 175: See RCW 82.19.900.

Effective dates—Severability—1991 sp.s. c 13: See notes following RCW 18.08.240.

Effective date—1985 c 57: See note following RCW 18.04.105.

Chapter 70.94 RCW
WASHINGTON CLEAN AIR ACT

Sections

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70.94.100 Air pollution control authority—Board of directors—Composition—Term.
70.94.120 City selection committees—Meetings, notice, recording officer—Alternative mail balloting—Notice.
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70.94.651 Recodified as RCW 70.94.6544.

OUTDOOR BURNING

70.94.6511 Definition of "outdoor burning."
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70.94.755 Recodified as RCW 70.94.6518.
70.94.760 Recodified as RCW 70.94.6520.
70.94.765 Recodified as RCW 70.94.6522.
70.94.775 Recodified as RCW 70.94.6512.
70.94.780 Recodified as RCW 70.94.6516.

70.94.085 Cost-reimbursement agreements. (1) An authority may enter into a written cost-reimbursement agreement with a permit applicant or project proponent to recover from the applicant or proponent the reasonable costs incurred by the authority in carrying out the requirements of this chapter, as well as the requirements of other relevant laws, as they relate to permit coordination, environmental review, application review, technical studies, and permit processing.

(2) The cost-reimbursement agreement shall identify the tasks and costs for work to be conducted under the agreement. The agreement must include a schedule that states:

(a) The estimated number of weeks for initial review of the permit application;

(b) The estimated number of revision cycles;

(c) The estimated number of weeks for review of subsequent revision submittals;

(d) The estimated number of billable hours of employee time;

(e) The rate per hour; and

(f) A date for revision of the agreement if necessary.

(3) The written cost-reimbursement agreement shall be negotiated with the permit applicant or project proponent. Under the provisions of a cost-reimbursement agreement, funds from the applicant or proponent shall be used by the air pollution control authority to contract with an independent consultant to carry out the work covered by the cost-reimbursement agreement. The air pollution control authority may also use funds provided under a cost-reimbursement agreement to hire temporary employees, to assign current staff to review the work of the consultant, to provide necessary technical assistance when an independent consultant with comparable technical skills is unavailable, and to recover reasonable and necessary direct and indirect costs that arise from processing the permit. The air pollution control authority shall, in developing the agreement, ensure that final decisions that involve policy matters are made by the agency and not by the consultant. The air pollution control authority shall make an estimate of the number of permanent staff hours to process the permits, and shall contract with consultants or hire temporary employees to replace the time and functions committed by these permanent staff to the project. The billing process shall provide for accurate time and cost accounting and may include a billing cycle that provides for progress payments.

(4) The cost-reimbursement agreement must not negatively impact the processing of other permit applications. In order to maintain permit processing capacity, the agency may hire outside consultants, temporary employees, or make internal administrative changes. Consultants or temporary employees hired as part of a cost-reimbursement agreement or to maintain agency capacity are hired as agents of the state not of the permit applicant. The provisions of chapter 42.52 RCW apply to any cost-reimbursement agreement, and to any person hired as a result of a cost-reimbursement agreement. Members of the air pollution control authority's board of directors shall be considered as state officers, and employees of the air pollution control authority shall be considered as state employees, for the sole purpose of applying the restrictions of chapter 42.52 RCW to this section. [2009 c 97 § 12; 2007 c 94 § 14; 2003 c 70 § 5; 2000 c 251 § 6.]

Intent—Captions not law—Effective date—2000 c 251: See notes following RCW 43.21A.690.

70.94.100 Air pollution control authority—Board of directors—Composition—Term. (1) The governing body of each authority shall be known as the board of directors.

(2)(a) In the case of an authority comprised of one county, with a population of less than four hundred thousand people, the board shall be comprised of two appointees of the city selection committee, at least one of whom shall represent the city having the most population in the county, and two representatives to be designated by the board of county commissioners.

(b) In the case of an authority comprised of one county, with a population of equal to or greater than four hundred thousand people, the board shall be comprised of three appointees of cities, one each from the two cities with the most population in the county and one appointee of the city selection committee representing the other cities, and one representative to be designated by the board of county commissioners.

(c) In the case of an authority comprised of two, three, four, or five counties, the board shall be comprised of one appointee from each county, who shall represent the city having the most population in such county, to be designated by the mayor and city council of such city, and one representative from each county to be designated by the board of county commissioners of each county making up the authority.

(d) In the case of an authority comprised of six or more counties, the board shall be comprised of one representative from each county to be designated by the board of county commissioners of each county making up the authority, and three appointees, one each from the three largest cities within the local authority's jurisdiction to be appointed by the mayor and city council of such city.

(3) If the board of an authority otherwise would consist of an even number, the members selected as above provided shall agree upon and elect an additional member who shall be:

(a) In the case of an authority comprised of one county with a population of equal to or greater than four hundred thousand people, a citizen residing in the county who demonstrates significant professional experience in the field of public health, air quality protection, or meteorology; or

(b) In the case of an authority comprised of one county, with a population less than four hundred thousand people, or of more than one county, either a member of the governing body of one of the towns, cities or counties comprising the authority, or a private citizen residing in the authority.

(4) The terms of office of board members shall be four years.

(5) If an appointee is unable to complete his or her term as a board member, the vacancy for that office must be filled by the same method as the original appointment, except for the appointment by the city selection committee, which must use the method in RCW 70.94.120(1) for replacements. The person appointed as a replacement will serve the remainder of the term for that office.

(6) Wherever a member of a board has a potential conflict of interest in an action before the board, the member shall declare to the board the nature of the potential conflict

prior to participating in the action review. The board shall, if the potential conflict of interest, in the judgment of a majority of the board, may prevent the member from a fair and objective review of the case, remove the member from participation in the action. [2009 c 254 § 1; 2006 c 227 § 1; 1991 c 199 § 704; 1989 c 150 § 1; 1969 ex.s. c 168 § 13; 1967 c 238 § 21; 1957 c 232 § 10.]

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.120 City selection committees—Meetings, notice, recording officer—Alternative mail balloting—Notice. (1) The city selection committee of each county which is included within an authority shall meet within one month after the activation of such authority for the purpose of making its initial appointments to the board of such authority and thereafter whenever necessary for the purpose of making succeeding appointments. All meetings shall be held upon at least two weeks written notice given by the county auditor to each member of the city selection committee of each county and he shall give such notice upon request of any member of such committee. A similar notice shall be given to the general public by a publication of such notice in a newspaper of general circulation in such authority. The county auditor shall act as recording officer, maintain its records and give appropriate notice of its proceedings and actions.

(2) As an alternative to meeting in accordance with subsection (1) of this section, the county auditor may administer the appointment process through the mail.

(a) At least four months prior to the expiration of the term of office, the county auditor must mail a request to each member of the city selection committee seeking nominations to the office. The members of the selection committee have until the last day of the fourth month to return the nomination to the auditor or the auditor's designee.

(b) Within five business days of the close of the nomination period, the county auditor will mail ballots by certified mail to the members of the city selection committee, specifying the date by which to return the completed ballot which is the last day of the third month prior to the expiration of the term of office. Each mayor who chooses to participate in the balloting shall mark the choice for appointment, sign the ballot, and return the ballot to the county auditor. Each completed ballot shall be date-stamped upon receipt by the mayor or staff of the mayor of the city or town. The timely return of completed ballots by a majority of the members of each city selection committee constitutes a quorum and the common choice by a majority of the quorum constitutes a valid appointment.

(3) At least two weeks' written notice must be given by the county auditor to each member of the city selection committee prior to the nomination process. A similar notice shall be given to the general public by publication in a newspaper of general circulation in the authority. A single notice is sufficient for both the nomination process and the balloting process. [2009 c 254 § 2; 1995 c 261 § 2; 1969 ex.s. c 168 § 14; 1967 c 238 § 23; 1957 c 232 § 12.]

70.94.477 Limitations on use of solid fuel burning devices. (1) Unless allowed by rule under chapter 34.05 RCW, a person shall not cause or allow any of the following materials to be burned in any residential solid fuel burning device:

(a) Garbage;

(b) Treated wood;

(c) Plastics;

(d) Rubber products;

(e) Animals;

(f) Asphaltic products;

(g) Waste petroleum products;

(h) Paints; or

(i) Any substance, other than properly seasoned fuel wood, which normally emits dense smoke or obnoxious odors.

(2) To achieve and maintain attainment in areas of nonattainment for fine particulates in accordance with section 172 of the federal clean air act, a local air pollution control authority or the department may, after meeting requirements in subsection (3) of this section, prohibit the use of solid fuel burning devices, except:

(a) Fireplaces as defined in RCW 70.94.453(3);

(b) Wood stoves meeting the standards set forth in RCW 70.94.473(1)(b); or

(c) Pellet stoves.

(3) Prior to prohibiting the use of solid fuel burning devices under subsection (2) of this section, the department or the local air pollution control authority must:

(a) Seek input from any city, county, or jurisdictional health department affected by the proposal to prohibit the use of solid fuel burning devices; and

(b) Make written findings that:

(i) The area is designated as an area of nonattainment for fine particulate matter by the United States environmental protection agency, or is in maintenance status under that designation;

(ii) Emissions from solid fuel burning devices in the area are a major contributing factor for violating the national ambient air quality standard for fine particulates; and

(iii) The area has an adequately funded program to assist low-income households to secure an adequate source of heat, which may include wood stoves meeting the requirements of RCW 70.94.453(2).

(4) If and only if the nonattainment area is within the jurisdiction of the department and the legislative authority of a city or county within the area of nonattainment formally expresses concerns with the department's written findings, then the department must publish on the department's web site the reasons for prohibiting the use of solid fuel burning devices under subsection (2) of this section that includes a response to the concerns expressed by the city or county legislative authority.

(5) When a local air pollution control authority or the department prohibits the use of solid fuel burning devices as authorized by this section, the cities, counties, and jurisdictional health departments serving the area shall cooperate with the department or local air pollution control authority as the department or the local air pollution control authority implements the prohibition. However, cooperation shall not include enforcement of this prohibition. The responsibility for actual enforcement of the prohibition shall reside solely with the department or the local air pollution control authority.

(6) A prohibition issued by a local air pollution control authority or the department under this section shall not apply to a person in a residence or commercial establishment that does not have an adequate source of heat without burning wood.

(7) As used in this section, "jurisdictional health department" means a city, county, city-county, or district public health department. [2009 c 282 § 1; 1995 c 205 § 2; 1990 c 128 § 3; 1987 c 405 § 9.]

Severability—1987 c 405: See note following RCW 70.94.450.

70.94.541 Transportation demand management—Technical assistance. (1) The department of transportation shall provide staff support to the commute trip reduction board in carrying out the requirements of RCW 70.94.537.

(2) The department of transportation shall provide technical assistance to regional transportation planning organizations, counties, cities, towns, state agencies, as defined in RCW 40.06.010, and other employers in developing and implementing commute trip reduction plans and programs. The technical assistance shall include: (a) Guidance in single measurement methodology and practice to be used in determining progress in attaining plan goals; (b) developing model plans and programs appropriate to different situations; and (c) providing consistent training and informational materials for the implementation of commute trip reduction programs. Model plans and programs, training, and informational materials shall be developed in cooperation with representatives of regional transportation planning organizations, local governments, transit agencies, and employers.

(3) In carrying out this section the department of transportation may contract with statewide associations representing cities, towns, and counties to assist cities, towns, and counties in implementing commute trip reduction plans and programs. [2009 c 427 § 1; 2006 c 329 § 8; 1996 c 186 § 515; 1991 c 202 § 16.]

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

Captions not law—Effective date—Severability—1991 c 202: See notes following RCW 47.50.010.

70.94.547 Transportation demand management—Intent—State leadership. The legislature hereby recognizes the state's crucial leadership role in establishing and implementing effective commute trip reduction programs. Therefore, it is the policy of the state that the department of transportation and other state agencies, including institutions of higher education, shall aggressively develop substantive programs to reduce commute trips by state employees. Implementation of these programs will reduce energy consumption, congestion in urban areas, and air and water pollution associated with automobile travel. [2009 c 427 § 2; 2006 c 329 § 10; 1991 c 202 § 18.]

Captions not law—Effective date—Severability—1991 c 202: See notes following RCW 47.50.010.

70.94.551 Transportation demand management—State agencies—Joint comprehensive commute trip reduction plan—Reports. (1) The secretary of the department of transportation may coordinate an interagency board or other interested parties for the purpose of developing policies or guidelines that promote consistency among state agency commute trip reduction programs required by RCW 70.94.527 and 70.94.531 or developed under the joint comprehensive commute trip reduction plan described in this section. The board shall include representatives of the departments of transportation, general administration, ecology, and community, trade, and economic development and such other departments and interested groups as the secretary of the department of transportation determines to be necessary. Policies and guidelines shall be applicable to all state agencies including but not limited to policies and guidelines regarding parking and parking charges, employee incentives for commuting by other than single-occupant automobiles, flexible and alternative work schedules, alternative worksites, and the use of state-owned vehicles for car and van pools and guaranteed rides home. The policies and guidelines shall also consider the costs and benefits to state agencies of achieving commute trip reductions and consider mechanisms for funding state agency commute trip reduction programs.

(2) State agencies sharing a common location in affected urban growth areas where the total number of state employees is one hundred or more shall, with assistance from the department of transportation, develop and implement a joint commute trip reduction program. The worksite must be treated as specified in RCW 70.94.531 and 70.94.534.

(3) The department of transportation shall develop a joint comprehensive commute trip reduction plan for all state agencies, including institutions of higher education, located in the Olympia, Lacey, and Tumwater urban growth areas.

(a) In developing the joint comprehensive commute trip reduction plan, the department of transportation shall work with applicable state agencies, including institutions of higher education, and shall collaborate with the following entities: Local jurisdictions; regional transportation planning organizations as described in chapter 47.80 RCW; transit agencies, including regional transit authorities as described in chapter 81.112 RCW and transit agencies that serve areas within twenty- five miles of the Olympia, Lacey, or Tumwater urban growth areas; and the capitol campus design advisory committee established in RCW 43.34.080.

(b) The joint comprehensive commute trip reduction plan must build on existing commute trip reduction programs and policies. At a minimum, the joint comprehensive commute trip reduction plan must include strategies for telework and flexible work schedules, parking management, and consideration of the impacts of worksite location and design on multimodal transportation options.

(c) The joint comprehensive commute trip reduction plan must include performance measures and reporting methods and requirements.

(d) The joint comprehensive commute trip reduction plan may include strategies to accommodate differences in worksite size and location.

(e) The joint comprehensive commute trip reduction plan must be consistent with jurisdictional and regional transportation, land use, and commute trip reduction plans, the state six-year facilities plan, and the master plan for the capitol of the state of Washington.

(f) Not more than ninety days after the adoption of the joint comprehensive commute trip reduction plan, state agen-

cies within the three urban growth areas must implement a commute trip reduction program consistent with the objectives and strategies of the joint comprehensive commute trip reduction plan.

(4) The department of transportation shall review the initial commute trip reduction program of each state agency subject to the commute trip reduction plan for state agencies to determine if the program is likely to meet the applicable commute trip reduction goals and notify the agency of any deficiencies. If it is found that the program is not likely to meet the applicable commute trip reduction goals, the department of transportation will work with the agency to modify the program as necessary.

(5) Each state agency implementing a commute trip reduction plan shall report at least once per year to its agency director on the performance of the agency's commute trip reduction program as part of the agency's quality management, accountability, and performance system as defined by RCW 43.17.385. The reports shall assess the performance of the program, progress toward state goals established under RCW 70.94.537, and recommendations for improving the program.

(6) The department of transportation shall review the agency performance reports defined in subsection (5) of this section and submit a biennial report for state agencies subject to this chapter to the governor and incorporate the report in the commute trip reduction board report to the legislature as directed in RCW 70.94.537(6). The report shall include, but is not limited to, an evaluation of the most recent measurement results, progress toward state goals established under RCW 70.94.537, and recommendations for improving the performance of state agency commute trip reduction programs. The information shall be reported in a form established by the commute trip reduction board. [2009 c 427 § 3; 2006 c 329 § 11; 1997 c 250 § 6; 1996 c 186 § 516; 1991 c 202 § 19.]

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

Captions not law—Effective date—Severability—1991 c 202: See notes following RCW 47.50.010.

State vehicle parking account: RCW 43.01.225.

70.94.650 Recodified as RCW 70.94.6528. See Supplementary Table of Disposition of Former RCW Sections, this volume.

70.94.651 Recodified as RCW 70.94.6544. See Supplementary Table of Disposition of Former RCW Sections, this volume.

OUTDOOR BURNING

70.94.6511 Definition of "outdoor burning." As used in this subchapter, "outdoor burning" means the combustion of material of any type in an open fire or in an outdoor container without providing for the control of combustion or the control of emissions from the combustion. [2009 c 118 § 101.]

Purpose—2009 c 118: "The purpose of this act is to make technical, nonsubstantive changes to outdoor burning provisions of the Washington clean air act, chapter 70.94 RCW, to improve clarity. No provision of this act may be construed as a substantive change to the Washington clean air act." [2009 c 118 § 1.]

70.94.6512 Outdoor burning—Fires prohibited—Exceptions. Except as provided in RCW 70.94.6546, no person shall cause or allow any outdoor fire:

(1) Containing garbage, dead animals, asphalt, petroleum products, paints, rubber products, plastics, or any substance other than natural vegetation that normally emits dense smoke or obnoxious odors. Agricultural heating devices that otherwise meet the requirements of this chapter shall not be considered outdoor fires under this section;

(2) During a forecast, alert, warning or emergency condition as defined in RCW 70.94.715 or impaired air quality condition as defined in RCW 70.94.473. [2009 c 118 § 102; 1995 c 362 § 2; 1991 c 199 § 410; 1974 ex.s. c 164 § 1; 1973 2nd ex.s. c 11 § 1; 1973 1st ex.s. c 193 § 9. Formerly RCW 70.94.775.]

Purpose—2009 c 118: See note following RCW 70.94.6511.

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.6514 Outdoor burning—Areas where prohibited—Exceptions—Use for management of storm or flood-related debris—Silvicultural burning. (1) Consistent with the policy of the state to reduce outdoor burning to the greatest extent practical, outdoor burning shall not be allowed in:

(a) Any area of the state where federal or state ambient air quality standards are exceeded for pollutants emitted by outdoor burning; or

(b) Any urban growth area as defined by RCW 36.70A.030, or any city of the state having a population greater than ten thousand people if such cities are threatened to exceed state or federal air quality standards, and alternative disposal practices consistent with good solid waste management are reasonably available or practices eliminating production of organic refuse are reasonably available.

(2) Notwithstanding any other provision of this section, outdoor burning may be allowed for the exclusive purpose of managing storm or flood-related debris. The decision to allow burning shall be made by the entity with permitting jurisdiction as determined under RCW 70.94.6534 or 70.94.6518. If outdoor burning is allowed in areas subject to subsection (1)(a) or (b) of this section, a permit shall be required, and a fee may be collected to cover the expenses of administering and enforcing the permit. All conditions and restrictions pursuant to RCW 70.94.6526(1) and 70.94.6512 apply to outdoor burning allowed under this section.

(3)(a) Outdoor burning that is normal, necessary, and customary to ongoing agricultural activities, that is consistent with agricultural burning authorized under RCW 70.94.6528 and 70.94.6532, is allowed within the urban growth area in accordance with RCW 70.94.6528(8)(a).

(b) Outdoor burning of cultivated orchard trees shall be allowed as an ongoing agricultural activity under this section in accordance with RCW 70.94.6528(8)(b).

(4) This section shall not apply to silvicultural burning used to improve or maintain fire dependent ecosystems for rare plants or animals within state, federal, and private natural area preserves, natural resource conservation areas, parks, and other wildlife areas. [2009 c 118 § 103; 2004 c 213 § 1;

2001 1st sp.s. c 12 § 1; 1998 c 68 § 1; 1997 c 225 § 1; 1991 c 199 § 402. Formerly RCW 70.94.743.]

Purpose—2009 c 118: See note following RCW 70.94.6511.

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.6516 Outdoor burning—Permits issued by political subdivisions. In addition to any other powers granted to them by law, the fire protection agency, county, or conservation district issuing burning permits shall regulate or prohibit outdoor burning as necessary to prevent or abate the nuisances caused by such burning. No fire protection agency, county, or conservation district may issue a burning permit in an area where the department or local board has declared any stage of impaired air quality per RCW 70.94.473 or any stage of an air pollution episode. All burning permits issued shall be subject to all applicable fee, permitting, penalty, and enforcement provisions of this chapter. The permitted burning shall not cause damage to public health or the environment.

Any entity issuing a permit under this section may charge a fee at the level necessary to recover the costs of administering and enforcing the permit program. [1991 c 199 § 411; 1973 1st ex.s. c 193 § 10. Formerly RCW 70.94.780.]

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.6518 Limited outdoor burning—Establishment of program. Each activated air pollution control authority, and the department of ecology in those areas outside the jurisdictional boundaries of an activated air pollution control authority, shall establish, through regulations, ordinances, or policy, a program implementing the limited burning policy authorized by RCW 70.94.6514, 70.94.6518, 70.94.6520, 70.94.6522, 70.94.6524, and 70.94.6526. [2009 c 118 § 201; 1997 c 225 § 2; 1972 ex.s. c 136 § 4. Formerly RCW 70.94.755.]

Purpose—2009 c 118: See note following RCW 70.94.6511.

70.94.6520 Limited outdoor burning—Construction. Nothing contained in RCW 70.94.6514, 70.94.6518, 70.94.6520, 70.94.6522, 70.94.6524, and 70.94.6526 is intended to alter or change the provisions of RCW 70.94.6534, 70.94.710 through 70.94.730, and 76.04.205. [2009 c 118 § 202; 1986 c 100 § 55; 1972 ex.s. c 136 § 5. Formerly RCW 70.94.760.]

Purpose—2009 c 118: See note following RCW 70.94.6511.

70.94.6522 Limited outdoor burning—Authority of local air pollution control authority or department of ecology to allow outdoor fires not restricted. Nothing in RCW 70.94.6514, 70.94.6518, 70.94.6520, 70.94.6522, 70.94.6524, and 70.94.6526 shall be construed as prohibiting a local air pollution control authority or the department of ecology in those areas outside the jurisdictional boundaries of an activated pollution control authority from allowing the burning of outdoor fires. [2009 c 118 § 203; 1972 ex.s. c 136 § 6. Formerly RCW 70.94.765.]

Purpose—2009 c 118: See note following RCW 70.94.6511.

70.94.6524 Limited outdoor burning—Program—Exceptions. (1) It shall be the responsibility and duty of the department of natural resources, department of ecology, department of agriculture, fire districts, and local air pollution control authorities to establish, through regulations, ordinances, or policy, a limited burning permit program.

(2) The permit program shall apply to residential and land clearing burning in the following areas:

(a) In the nonurban areas of any county with an unincorporated population of greater than fifty thousand; and

(b) In any city and urban growth area that is not otherwise prohibited from burning pursuant to RCW 70.94.6514.

(3) The permit program shall apply only to land clearing burning in the nonurban areas of any county with an unincorporated population of less than fifty thousand.

(4) The permit program may be limited to a general permit by rule, or by verbal, written, or electronic approval by the permitting entity.

(5) Notwithstanding any other provision of this section, neither a permit nor the payment of a fee shall be required for outdoor burning for the purpose of disposal of tumbleweeds blown by wind. Such burning shall not be conducted during an air pollution episode or any stage of impaired air quality declared under RCW 70.94.715. This subsection (5) shall only apply within counties with a population less than two hundred fifty thousand.

(6) Burning shall be prohibited in an area when an alternate technology or method of disposing of the organic refuse is available, reasonably economical, and less harmful to the environment. It is the policy of this state to foster and encourage development of alternate methods or technology for disposing of or reducing the amount of organic refuse.

(7) Incidental agricultural burning must be allowed without applying for any permit and without the payment of any fee if:

(a) The burning is incidental to commercial agricultural activities;

(b) The operator notifies the local fire department within the area where the burning is to be conducted;

(c) The burning does not occur during an air pollution episode or any stage of impaired air quality declared under RCW 70.94.715; and

(d) Only the following items are burned:

(i) Orchard prunings;

(ii) Organic debris along fence lines or irrigation or drainage ditches; or

(iii) Organic debris blown by wind.

(8) As used in this section, "nonurban areas" are unincorporated areas within a county that are not designated as urban growth areas under chapter 36.70A RCW.

(9) Nothing in this section shall require fire districts to enforce air quality requirements related to outdoor burning, unless the fire district enters into an agreement with the department of ecology, department of natural resources, a local air pollution control authority, or other appropriate entity to provide such enforcement. [2009 c 118 § 301; 1995 c 206 § 1; 1991 c 199 § 401; 1972 ex.s. c 136 § 2. Formerly RCW 70.94.745.]

Purpose—2009 c 118: See note following RCW 70.94.6511.

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.6526 Limited outdoor burning—Permits issued by political subdivisions—Types of fires permitted. The following outdoor fires described in this section may be burned subject to the provisions of this chapter and also subject to city ordinances, county resolutions, rules of fire districts and laws, and rules enforced by the department of natural resources if a permit has been issued by a fire protection agency, county, or conservation district:

(1) Fires consisting of leaves, clippings, prunings and other yard and gardening refuse originating on lands immediately adjacent and in close proximity to a human dwelling and burned on such lands by the property owner or his or her designee.

(2) Fires consisting of residue of a natural character such as trees, stumps, shrubbery or other natural vegetation arising from land clearing projects or agricultural pursuits for pest or disease control; except that the fires described in this subsection may be prohibited in those areas having a general population density of one thousand or more persons per square mile. [2009 c 118 § 302; 1991 c 199 § 412; 1972 ex.s. c 136 § 3. Formerly RCW 70.94.750.]

Purpose—2009 c 118: See note following RCW 70.94.6511.

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.6528 Permits—Issuance—Conditioning of permits—Fees—Agricultural burning practices and research task force—Development of public education materials—Agricultural activities. (1) Any person who proposes to set fires in the course of agricultural activities shall obtain a permit from an air pollution control authority, the department of ecology, or a local entity delegated permitting authority under RCW 70.94.6530. General permit criteria of statewide applicability shall be established by the department, by rule, after consultation with the various air pollution control authorities.

(a) Permits shall be issued under this section based on seasonal operations or by individual operations, or both.

(b) Incidental agricultural burning consistent with provisions established in RCW 70.94.6524 is allowed without applying for any permit and without the payment of any fee.

(2) The department of ecology, local air authorities, or a local entity with delegated permit authority shall:

(a) Condition all permits to insure that the public interest in air, water, and land pollution and safety to life and property is fully considered;

(b) Condition all burning permits to minimize air pollution insofar as practical;

(c) Act upon, within seven days from the date an application is filed under this section, an application for a permit to set fires in the course of agricultural burning for controlling diseases, insects, weed abatement, or development of physiological conditions conducive to increased crop yield;

(d) Provide convenient methods for issuance and oversight of agricultural burning permits; and

(e) Work, through agreement, with counties and cities to provide convenient methods for granting permission for agricultural burning, including telephone, facsimile transmission, issuance from local city or county offices, or other methods.

(3) A local air authority administering the permit program under subsection (2) of this section shall not limit the number of days of allowable agricultural burning, but may consider the time of year, meteorological conditions, and other criteria specified in rules adopted by the department to implement subsection (2) of this section.

(4) In addition to following any other requirements established by the department to protect air quality pursuant to other laws, applicants for permits must show that the setting of fires as requested is the most reasonable procedure to follow in safeguarding life or property under all circumstances or is otherwise reasonably necessary to successfully carry out the enterprise in which the applicant is engaged, or both. Nothing in this section relieves the applicant from obtaining permits, licenses, or other approvals required by any other law.

(5) The department of ecology, the appropriate local air authority, or a local entity with delegated permitting authority pursuant to RCW 70.94.6530 at the time the permit is issued shall assess and collect permit fees for burning under this section. All fees collected shall be deposited in the air pollution control account created in RCW 70.94.015, except for that portion of the fee necessary to cover local costs of administering a permit issued under this section. Fees shall be set by rule by the permitting agency at the level determined by the task force created by subsection (6) of this section, but shall not exceed two dollars and fifty cents per acre to be burned. After fees are established by rule, any increases in such fees shall be limited to annual inflation adjustments as determined by the state office of the economic and revenue forecast council.

(6) An agricultural burning practices and research task force shall be established under the direction of the department. The task force shall be composed of a representative from the department who shall serve as chair; one representative of eastern Washington local air authorities; three representatives of the agricultural community from different agricultural pursuits; one representative of the department of agriculture; two representatives from universities or colleges knowledgeable in agricultural issues; one representative of the public health or medical community; and one representative of the conservation districts. The task force shall:

(a) Identify best management practices for reducing air contaminant emissions from agricultural activities and provide such information to the department and local air authorities;

(b) Determine the level of fees to be assessed by the permitting agency pursuant to subsection (5) of this section, based upon the level necessary to cover the costs of administering and enforcing the permit programs, to provide funds for research into alternative methods to reduce emissions from such burning, and to the extent possible be consistent with fees charged for such burning permits in neighboring states. The fee level shall provide, to the extent possible, for lesser fees for permittees who use best management practices to minimize air contaminant emissions;

(c) Identify research needs related to minimizing emissions from agricultural burning and alternatives to such burning; and

(d) Make recommendations to the department on priorities for spending funds provided through this chapter for research into alternative methods to reduce emissions from agricultural burning.

(7) Conservation districts and the Washington State University agricultural extension program in conjunction with the department shall develop public education material for the agricultural community identifying the health and environmental effects of agricultural outdoor burning and providing technical assistance in alternatives to agricultural outdoor burning.

(8)(a) Outdoor burning that is normal, necessary, and customary to ongoing agricultural activities, that is consistent with agricultural burning authorized under this section and RCW 70.94.6532, is allowed within the urban growth area as described in RCW 70.94.6514 if the burning is not conducted during air quality episodes, or where a determination of impaired air quality has been made as provided in RCW 70.94.473, and the agricultural activities preceded the designation as an urban growth area.

(b) Outdoor burning of cultivated orchard trees, whether or not agricultural crops will be replanted on the land, shall be allowed as an ongoing agricultural activity under this section if a local horticultural pest and disease board formed under chapter 15.09 RCW, an extension office agent with Washington State University that has horticultural experience, or an entomologist employed by the department of agriculture, has determined in writing that burning is an appropriate method to prevent or control the spread of horticultural pests or diseases. [2009 c 118 § 401; 1998 c 43 § 1. Prior: 1995 c 362 § 1; 1995 c 58 § 1; 1994 c 28 § 2; 1993 c 353 § 1; 1991 c 199 § 408; 1971 ex.s. c 232 § 1. Formerly RCW 70.94.650.]

Purpose—2009 c 118: See note following RCW 70.94.6511.

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.6530 Delegation of permit issuance and enforcement to political subdivisions. Whenever an air pollution control authority, or the department of ecology for areas outside the jurisdictional boundaries of an activated air pollution control authority, shall find that any fire protection agency, county, or conservation district is capable of effectively administering the issuance and enforcement of permits for any or all of the kinds of burning identified in RCW 70.94.6528, 70.94.6546, and 70.94.6552 and desirous of doing so, the authority or the department of ecology, as appropriate, may delegate powers necessary for the issuance or enforcement, or both, of permits for any or all of the kinds of burning to the fire protection agency, county, or conservation district. Such delegation may be withdrawn by the authority or the department of ecology upon finding that the fire protection agency, county, or conservation district is not effectively administering the permit program. [2009 c 118 § 402; 1993 c 353 § 2; 1991 c 199 § 409; 1973 1st ex.s. c 193 § 6. Formerly RCW 70.94.654.]

Purpose—2009 c 118: See note following RCW 70.94.6511.

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.6532 Open burning of grasses grown for seed—Alternatives—Studies—Deposit of permit fees in special grass seed burning account—Procedures—Limitations—Report. It is hereby declared to be the policy of this state that strong efforts should be made to minimize adverse effects on air quality from the open burning of field and turf grasses grown for seed. To such end this section is intended to promote the development of economical and practical alternate agricultural practices to such burning, and to provide for interim regulation of such burning until practical alternates are found.

(1) The department shall approve of a study or studies for the exploration and identification of economical and practical alternate agricultural practices to the open burning of field and turf grasses grown for seed. Any study conducted pursuant to this section shall be conducted by Washington State University. The university may not charge more than eight percent for administrative overhead. Prior to the issuance of any permit for such burning under RCW 70.94.6528, there shall be collected a fee not to exceed one dollar per acre of crop to be burned. Any such fees received by any authority shall be transferred to the department of ecology. The department of ecology shall deposit all such acreage fees in a special grass seed burning research account, hereby created, in the state treasury.

(2) The department shall allocate moneys annually from this account for the support of any approved study or studies as provided for in subsection (1) of this section. Whenever the department of ecology shall conclude that sufficient reasonably available alternates to open burning have been developed, and at such time as all costs of any studies have been paid, the grass seed burning research account shall be dissolved, and any money remaining therein shall revert to the general fund. The fee collected under subsection (1) of this section shall constitute the research portion of fees required under RCW 70.94.6528 for open burning of grass grown for seed.

(3) Whenever on the basis of information available to it, the department after public hearings have been conducted wherein testimony will be received and considered from interested parties wishing to testify shall conclude that any procedure, program, technique, or device constitutes a practical alternate agricultural practice to the open burning of field or turf grasses grown for seed, the department shall, by order, certify approval of such alternate. Thereafter, in any case which any such approved alternate is reasonably available, the open burning of field and turf grasses grown for seed shall be disallowed and no permit shall issue therefor.

(4) Until approved alternates become available, the department or the authority may limit the number of acres on a pro rata basis among those affected for which permits to burn will be issued in order to effectively control emissions from this source.

(5) Permits issued for burning of field and turf grasses may be conditioned to minimize emissions insofar as practical, including denial of permission to burn during periods of adverse meteorological conditions.

(6) Every two years until grass seed burning is prohibited, Washington State University may prepare a brief report assessing the potential of the university's research to result in economical and practical alternatives to grass seed burning. [2009 c 118 § 403; 1998 c 245 § 130; 1995 c 261 § 1; 1991 sp.s. c 13 § 28; 1991 c 199 § 413; 1990 c 113 § 1; 1985 c 57 § 69; 1973 1st ex.s. c 193 § 7. Formerly RCW 70.94.656.]

Purpose—2009 c 118: See note following RCW 70.94.6511.

Effective dates—Severability—1991 sp.s. c 13: See notes following RCW 18.08.240.

Finding—1991 c 199: See note following RCW 70.94.011.

Effective date—1985 c 57: See note following RCW 18.04.105.

Grass burning research advisory committee: Chapter 43.21E RCW.

70.94.6534 Burning permits for abating or prevention of forest fire hazards, management of ecosystems, instruction or silvicultural operations—Issuance. (1) The department of natural resources shall have the responsibility for issuing and regulating burning permits required by it relating to the following activities for the protection of life or property and/or for the public health, safety, and welfare:

(a) Abating a forest fire hazard;

(b) Prevention of a fire hazard;

(c) Instruction of public officials in methods of forest fire fighting;

(d) Any silvicultural operation to improve the forest lands of the state; and

(e) Silvicultural burning used to improve or maintain fire dependent ecosystems for rare plants or animals within state, federal, and private natural area preserves, natural resource conservation areas, parks, and other wildlife areas.

(2) The department of natural resources shall not retain such authority, but it shall be the responsibility of the appropriate fire protection agency for permitting and regulating outdoor burning on lands where the department of natural resources does not have fire protection responsibility.

(3) Permit fees shall be assessed for silvicultural burning under the jurisdiction of the department of natural resources and collected by the department of natural resources as provided for in this section. All fees shall be deposited in the air pollution control account, created in RCW 70.94.015. The legislature shall appropriate to the department of natural resources funds from the air pollution control account to enforce and administer the program under RCW 70.94.6534, 70.94.6536, 70.94.6538, and 70.94.6540. Fees shall be set by rule by the department of natural resources at the level necessary to cover the costs of the program after receiving recommendations on such fees from the public and the forest fire advisory board established by RCW 76.04.145. [2009 c 118 § 501; 1991 c 199 § 404; 1971 ex.s. c 232 § 2. Formerly RCW 70.94.660.]

Purpose—2009 c 118: See note following RCW 70.94.6511.

Finding—1991 c 199: See note following RCW 70.94.011.

Burning permits, issuance, air pollution a factor: RCW 76.04.205.

Disposal of forest debris: RCW 76.04.650.

70.94.6536 Silvicultural forest burning—Reduce statewide emissions—Exemption—Monitoring program. (1) The department of natural resources shall administer a program to reduce statewide emissions from silvicultural forest burning so as to achieve the following minimum objectives:

(a) Twenty percent reduction by December 31, 1994 providing a ceiling for emissions until December 31, 2000; and

(b) Fifty percent reduction by December 31, 2000 providing a ceiling for emissions thereafter.

Reductions shall be calculated from the average annual emissions level from calendar years 1985 to 1989, using the same methodology for both reduction and base year calculations.

(2) The department of natural resources, within twelve months after May 15, 1991, shall develop a plan, based upon the existing smoke management agreement to carry out the programs as described in this section in the most efficient, cost-effective manner possible. The plan shall be developed in consultation with the department of ecology, public and private landowners engaged in silvicultural forest burning, and representatives of the public.

The plan shall recognize the variations in silvicultural forest burning including, but not limited to, a landowner's responsibility to abate an extreme fire hazard under chapter 76.04 RCW and other objectives of burning, including abating and preventing a fire hazard, geographic region, climate, elevation and slope, proximity to populated areas, and diversity of land ownership. The plan shall establish priorities that the department of natural resources shall use to allocate allowable emissions, including but not limited to, silvicultural burning used to improve or maintain fire dependent ecosystems for rare plants or animals within state, federal, and private natural area preserves, natural resource conservation areas, parks, and other wildlife areas. The plan shall also recognize the real costs of the emissions program and recommend equitable fees to cover the costs of the program.

The emission reductions in this section are to apply to all forest lands including those owned and managed by the United States. If the United States does not participate in implementing the plan, the departments of natural resources and ecology shall use all appropriate and available methods or enforcement powers to ensure participation.

The plan shall include a tracking system designed to measure the degree of progress toward the emission reductions goals set in this section. The department of natural resources shall report annually to the department of ecology and the legislature on the status of the plan, emission reductions and progress toward meeting the objectives specified in this section, and the goals of this chapter and chapter 76.04 RCW.

(3) If the December 31, 1994, emission reductions targets in this section are not met, the department of natural resources, in consultation with the department of ecology, shall use its authority granted in this chapter and chapter 76.04 RCW to immediately limit emissions from such burning to the 1994 target levels and limit silvicultural forest burning in subsequent years to achieve equal annual incremental reductions so as to achieve the December 31, 2000, target level. If, as a result of the program established in this section, the emission reductions are met in 1994, but are not met by December 31, 2000, the department of natural resources in consultation with the department of ecology shall immediately limit silvicultural forest burning to reduce emissions from such burning to the December 31, 2000, target level in all subsequent years.

(4) Emissions from silvicultural burning in eastern Washington that is conducted for the purpose of restoring forest health or preventing the additional deterioration of forest health are exempt from the reduction targets and calculations in this section if the following conditions are met:

(a) The landowner submits a written request to the department identifying the location of the proposed burning and the nature of the forest health problem to be corrected. The request shall include a brief description of alternatives to

silvicultural burning and reasons why the landowner believes the alternatives not to be appropriate.

(b) The department determines that the proposed silvicultural burning operation is being conducted to restore forest health or prevent additional deterioration to forest health; meets the requirements of the state smoke management plan to protect public health, visibility, and the environment; and will not be conducted during an air pollution episode or during periods of impaired air quality in the vicinity of the proposed burn.

(c) Upon approval of the request by the department and before burning, the landowner is encouraged to notify the public in the vicinity of the burn of the general location and approximate time of ignition.

(5) The department of ecology may conduct a limited, seasonal ambient air quality monitoring program to measure the effects of forest health burning conducted under subsection (4) of this section. The monitoring program may be developed in consultation with the department of natural resources, private and public forest landowners, academic experts in forest health issues, and the general public. [1995 c 143 § 1; 1991 c 199 § 403. Formerly RCW 70.94.665.]

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.6538 Burning permits for abating or prevention of forest fire hazards, management of ecosystems, instruction or silvicultural operations—Conditions for issuance and use of permits—Air quality standards to be met—Alternate methods to lessen forest debris. The department of natural resources in granting burning permits for fires for the purposes set forth in RCW 70.94.6534 shall condition the issuance and use of such permits to comply with air quality standards established by the department of ecology after full consultation with the department of natural resources. Such burning shall not cause the state air quality standards to be exceeded in the ambient air up to two thousand feet above ground level over critical areas designated by the department of ecology, otherwise subject to air pollution from other sources. Air quality standards shall be established and published by the department of ecology which shall also establish a procedure for advising the department of natural resources when and where air contaminant levels exceed or threaten to exceed the ambient air standards over such critical areas. The air quality shall be quantitatively measured by the department of ecology or the appropriate local air pollution control authority at established monitoring stations over such designated areas. Further, such permitted burning shall not cause damage to public health or the environment. All permits issued under this section shall be subject to all applicable fees, permitting, penalty, and enforcement provisions of this chapter. The department of natural resources shall set forth smoke dispersal objectives designed consistent with this section to minimize any air pollution from such burning and the procedures necessary to meet those objectives.

The department of natural resources shall encourage more intense utilization in logging and alternative silviculture practices to reduce the need for burning. The department of natural resources shall, whenever practical, encourage landowners to develop and use alternative acceptable disposal methods subject to the following priorities: (1) Slash production minimization, (2) slash utilization, (3) nonburning disposal, (4) silvicultural burning. Such alternative methods shall be evaluated as to the relative impact on air, water, and land pollution, public health, and their financial feasibility.

The department of natural resources shall not issue burning permits and shall revoke previously issued permits at any time in any area where the department of ecology or local board has declared a stage of impaired air quality as defined in RCW 70.94.473. [2009 c 118 § 502; 1991 c 199 § 405; 1971 ex.s. c 232 § 3. Formerly RCW 70.94.670.]

Purpose—2009 c 118: See note following RCW 70.94.6511.

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.654 Recodified as RCW 70.94.6530. See Supplementary Table of Disposition of Former RCW Sections, this volume.

70.94.6540 Cooperation between department of natural resources and state, local, or regional air pollution authorities—Withholding of permits. In the regulation of outdoor burning not included in RCW 70.94.6534 requiring permits from the department of natural resources, said department and the state, local, or regional air pollution control authorities will cooperate in regulating such burning so as to minimize insofar as possible duplicate inspections and separate permits while still accomplishing the objectives and responsibilities of the respective agencies. The department of natural resources shall include any local authority's burning regulations with permits issued where applicable pursuant to RCW 70.94.6512, 70.94.6514, 70.94.6518, 70.94.6520, 70.94.6522, 70.94.6524, and 70.94.6526. The department shall develop agreements with all local authorities to coordinate regulations.

Permits shall be withheld by the department of natural resources when so requested by the department of ecology if a forecast, alert, warning, or emergency condition exists as defined in the episode criteria of the department of ecology. [2009 c 118 § 503; 1991 c 199 § 406; 1971 ex.s. c 232 § 5. Formerly RCW 70.94.690.]

Purpose—2009 c 118: See note following RCW 70.94.6511.

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.6542 Adoption of rules. The department of natural resources and the department of ecology may adopt rules necessary to implement their respective responsibilities under the provisions of RCW 70.94.6528, 70.94.6530, 70.94.6532, 70.94.6534, 70.94.6536, 70.94.6538, 70.94.6540, 70.94.6542, and 70.94.6544. [2009 c 118 § 504; 1971 ex.s. c 232 § 6. Formerly RCW 70.94.700.]

Purpose—2009 c 118: See note following RCW 70.94.6511.

70.94.6544 Burning permits for regeneration of rare and endangered plants. Nothing in this chapter prohibits fires necessary to promote the regeneration of rare and endangered plants found within natural area preserves as identified under chapter 79.70 RCW. Permits issued for burning under this section shall be drafted to minimize emissions including denial of permission to burn during periods of adverse meteorological conditions. [2009 c 118 § 703; 1991 c 199 § 407. Formerly RCW 70.94.651.]

Purpose—2009 c 118: See note following RCW 70.94.6511.

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.6546 Aircraft crash rescue fire training—Training to fight structural fires—Training to fight forest fires—Other firefighter instruction. (1) Aircraft crash rescue fire training activities meeting the following conditions do not require a permit under this section, or under RCW 70.94.6512, 70.94.6514, 70.94.6516, 70.94.6518, 70.94.6520, 70.94.6522, 70.94.6524, and 70.94.6526, from an air pollution control authority, the department, or any local entity with delegated permit authority:

(a) Firefighters participating in the training fires must be limited to those who provide firefighting support to an airport that is either certified by the federal aviation administration or operated in support of military or governmental activities;

(b) The fire training may not be conducted during an air pollution episode or any stage of impaired air quality declared under RCW 70.94.715 for the area where training is to be conducted;

(c) The number of training fires allowed per year without a permit shall be the minimum number necessary to meet federal aviation administration or other federal safety requirements;

(d) The facility shall use current technology and be operated in a manner that will minimize, to the extent possible, the air contaminants generated during operation; and

(e) The organization conducting training shall notify both the: (i) Local fire district or fire department; and (ii) air pollution control authority, department of ecology, or local entity delegated permitting authority under RCW 70.94.6530, having jurisdiction within the area where training is to be conducted before the commencement of aircraft fire training. Written approval from the department or a local air pollution control authority shall be obtained prior to the initial operation of aircraft crash rescue fire training. Such approval will be granted to fire training activities meeting the conditions in this subsection.

(2) Aircraft crash rescue fire training activities conducted in compliance with subsection (1) of this section are not subject to the prohibition, in RCW 70.94.6512(1), of outdoor fires containing petroleum products and are not considered outdoor burning under RCW 70.94.6512, 70.94.6514, 70.94.6516, 70.94.6518, 70.94.6520, 70.94.6522, 70.94.6524, and 70.94.6526.

(3) Training to fight structural fires located outside urban growth areas in counties that plan under the requirements of RCW 36.70A.040 and outside of any city with a population of ten thousand or more in all other counties does not need a permit under this section from an air pollution control authority or the department of ecology, but must be conducted in accordance with RCW 52.12.150.

(4) Training to fight forest fires does not require a permit from an air pollution control authority or the department of ecology.

(5) To provide for firefighting instruction in instances not governed by subsections (1) through (3) of this section, or other actions to protect public health and safety, the department or a local air pollution control authority may issue permits that allow limited burning of prohibited materials listed in RCW 70.94.6512(1). [2009 c 118 § 601.]

Purpose—2009 c 118: See note following RCW 70.94.6511.

70.94.6548 Outdoor burning allowed for managing storm or flood-related debris. Consistent with RCW 70.94.6514, outdoor burning may be allowed anywhere in the state for the exclusive purpose of managing storm or flood-related debris. [2009 c 118 § 701.]

Purpose—2009 c 118: See note following RCW 70.94.6511.

70.94.6550 Fires necessary for Indian ceremonies or smoke signals. Nothing in this chapter prohibits fires necessary for Indian ceremonies or for the sending of smoke signals if part of a religious ritual. Permits issued for burning under this section shall be drafted to minimize emissions including denial of permission to burn during periods of adverse meteorological conditions. [2009 c 118 § 702.]

Purpose—2009 c 118: See note following RCW 70.94.6511.

70.94.6552 Permit to set fires for weed abatement. Any person who proposes to set fires in the course of weed abatement shall obtain a permit from an air pollution control authority, the department of ecology, or a local entity delegated permitting authority under RCW 70.94.6530. General permit criteria of statewide applicability shall be established by the department, by rule, after consultation with the various air pollution control authorities. Permits shall be issued under this section based on seasonal operations or by individual operations, or both. All permits shall be conditioned to insure that the public interest in air, water, and land pollution and safety to life and property is fully considered. In addition to any other requirements established by the department to protect air quality pursuant to other laws, applicants for permits must show that the setting of fires as requested is the most reasonable procedure to follow in safeguarding life or property under all circumstances or is otherwise reasonably necessary to successfully carry out the enterprise in which the applicant is engaged, or both. All burning permits will be designed to minimize air pollution insofar as practical. Nothing in this section relieves the applicant from obtaining permits, licenses, or other approvals required by any other law. An application for a permit to set fires in the course of weed abatement shall be acted upon within seven days from the date such application is filed. [2009 c 118 § 704.]

Purpose—2009 c 118: See note following RCW 70.94.6511.

70.94.6554 Disposal of tumbleweeds. Consistent with RCW 70.94.6524, neither a permit nor the payment of a fee shall be required for outdoor burning for the purpose of disposal of tumbleweeds blown by wind. Such burning shall not be conducted during an air pollution episode or any stage of impaired air quality declared under RCW 70.94.715. This section shall only apply within counties with a population less than two hundred fifty thousand. [2009 c 118 § 705.]

Purpose—2009 c 118: See note following RCW 70.94.6511.

70.94.656 Recodified as RCW 70.94.6532. See Supplementary Table of Disposition of Former RCW Sections, this volume.

70.94.660 Recodified as RCW 70.94.6534. See Supplementary Table of Disposition of Former RCW Sections, this volume.

70.94.665 Recodified as RCW 70.94.6536. See Supplementary Table of Disposition of Former RCW Sections, this volume.

70.94.670 Recodified as RCW 70.94.6538. See Supplementary Table of Disposition of Former RCW Sections, this volume.

70.94.690 Recodified as RCW 70.94.6540. See Supplementary Table of Disposition of Former RCW Sections, this volume.

70.94.700 Recodified as RCW 70.94.6542. See Supplementary Table of Disposition of Former RCW Sections, this volume.

70.94.743 Recodified as RCW 70.94.6514. See Supplementary Table of Disposition of Former RCW Sections, this volume.

70.94.745 Recodified as RCW 70.94.6524. See Supplementary Table of Disposition of Former RCW Sections, this volume.

70.94.750 Recodified as RCW 70.94.6526. See Supplementary Table of Disposition of Former RCW Sections, this volume.

70.94.755 Recodified as RCW 70.94.6518. See Supplementary Table of Disposition of Former RCW Sections, this volume.

70.94.760 Recodified as RCW 70.94.6520. See Supplementary Table of Disposition of Former RCW Sections, this volume.

70.94.765 Recodified as RCW 70.94.6522. See Supplementary Table of Disposition of Former RCW Sections, this volume.

70.94.775 Recodified as RCW 70.94.6512. See Supplementary Table of Disposition of Former RCW Sections, this volume.

70.94.780 Recodified as RCW 70.94.6516. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 70.95 RCW

SOLID WASTE MANAGEMENT—REDUCTION AND RECYCLING

Sections

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70.95.555 Waste tires—License for transport or storage business—Requirements.
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70.95.170 Permit for solid waste handling facility—Required. Except as provided otherwise in RCW 70.95.300, 70.95.305, 70.95.306, 70.95.310, or 70.95.330, after approval of the comprehensive solid waste plan by the department no solid waste handling facility or facilities shall be maintained, established, or modified until the county, city, or other person operating such site has obtained a permit pursuant to RCW 70.95.180 or 70.95.190. [2009 c 178 § 4; 1998 c 156 § 3; 1997 c 213 § 2; 1969 ex.s. c 134 § 17.]

70.95.315 Penalty. (1) The department may assess a civil penalty in an amount not to exceed one thousand dollars per day per violation to any person exempt from solid waste permitting in accordance with RCW 70.95.300, 70.95.305, 70.95.306, or 70.95.330 who fails to comply with the terms and conditions of the exemption. Each such violation shall be a separate and distinct offense, and in the case of a continuing violation, each day's continuance shall be a separate and distinct violation. The penalty provided in this section shall be imposed pursuant to RCW 43.21B.300.

(2) If a person violates a provision of any of the sections referenced in subsection (1) of this section, the department may issue an appropriate order to ensure compliance with the conditions of the exemption. The order may be appealed pursuant to RCW 43.21B.310. [2009 c 178 § 5; 2005 c 510 § 7; 1998 c 156 § 7.]

70.95.330 Qualified anaerobic digesters exempt from permitting requirements of chapter—Definitions. (1) An anaerobic digester that complies with the conditions specified in this section is exempt from the permitting requirements of this chapter. To qualify for the exemption, an anaerobic digester must meet the following conditions:

(a) The owner or operator must provide the department or the jurisdictional health department with at least thirty days' notice of intent to operate under the conditions specified in this section and comply with any guidelines issued under subsection (2) of this section;

(b) The anaerobic digester must process at least fifty percent livestock manure by volume;

(c) The anaerobic digester may process no more than thirty percent imported organic waste-derived material by volume, and must comply with subsection (3) of this section;

(d) The anaerobic digester must comply with design and operating standards in the natural resources conservation service's conservation practice standard code 366 in effect as of July 26, 2009;

(e) Digestate must:

(i) Be managed in accordance with a dairy nutrient management plan under chapter 90.64 RCW that includes elements addressing management and use of digestate;

(ii) Meet compost quality standards concerning pathogens, stability, nutrient testing, and metals before it is distributed for off-site use, or be sent to an off-site permitted compost facility for further treatment to meet compost quality standards; or

(iii) Be processed or managed in an alternate manner approved by the department;

(f) The owner or operator must allow inspection by the department or jurisdictional health department at reasonable times to verify compliance with the conditions specified in this section; and

(g) The owner or operator must submit an annual report to the department or the jurisdictional health department concerning use of nonmanure material in the anaerobic digester and any required compliance testing.

(2) By August 1, 2009, the department and the department of agriculture, in consultation with the department of health, shall make available to anaerobic digester owners and operators clearly written guidelines for the anaerobic codigestion of livestock manure and organic waste-derived material. The guidelines must explain the steps necessary for an owner or operator to meet the conditions specified in this section for an exemption from the permitting requirements of this chapter.

(3) Any imported organic waste-derived material must:

(a) Be preconsumer in nature;

(b) Be fed into the anaerobic digester within thirty-six hours of receipt at the anaerobic digester;

(c) If it is likely to contain animal by-products, be previously source-separated at a facility licensed to process food by the United States department of agriculture, the United States food and drug administration, the Washington state department of agriculture, or other applicable regulatory agency;

(d) If it contains bovine processing waste, be derived from animals approved by the United States department of agriculture food safety and inspection service and not contain any specified risk material;

(e) If it contains sheep carcasses or sheep processing waste, not be fed into the anaerobic digester;

(f) Be stored and handled in a manner that protects surface water and groundwater and complies with best management practices;

(g) Be received or stored in structures that:

(i) Comply with the natural resources conservation service's conservation practice standard code 313 in effect as of July 26, 2009;

(ii) Are certified to be effective by a representative of the natural resources conservation service; or

(iii) Meet applicable construction industry standards adopted by the American concrete institute or the American institute of steel construction and in effect as of July 26, 2009; and

(h) Be managed to prevent migration of nuisance odors beyond property boundaries and minimize attraction of flies, rodents, and other vectors.

(4) Digestate that is managed in accordance with a dairy nutrient management plan under chapter 90.64 RCW that includes elements addressing management and use of digestate shall no longer be considered a solid waste. Use of digestate from an anaerobic digester that complies with the conditions specified in this section is exempt from the permitting requirements of this chapter.

(5) An anaerobic digester that does not comply with the conditions specified in this section may be subject to the permitting requirements of this chapter. In addition, violations of the conditions specified in this section are subject to provisions in RCW 70.95.315.

(6) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise:

(a) "Anaerobic digester" means a vessel that processes organic material into biogas and digestate using microorganisms in a decomposition process within a closed, oxygen-free container.

(b) "Best management practices" means managerial practices that prevent or reduce water pollution.

(c) "Digestate" means both solid and liquid substances that remain following anaerobic digestion of organic material in an anaerobic digester.

(d) "Imported" means originating off of the farm or other site where the anaerobic digester is being operated.

(e) "Organic waste-derived material" has the same meaning as defined in RCW 15.54.270 and any other organic wastes approved by the department, except for organic waste-derived material collected through municipal commercial and residential solid waste collection programs. [2009 c 178 § 1.]

70.95.510 Fee on the retail sale of new replacement vehicle tires. (1) There is levied a one dollar per tire fee on the retail sale of new replacement vehicle tires. The fee imposed in this section must be paid by the buyer to the seller, and each seller shall collect from the buyer the full amount of the fee. The fee collected from the buyer by the seller less the ten percent amount retained by the seller as provided in RCW 70.95.535(1) must be paid to the department of revenue in accordance with RCW 82.32.045.

(2) The department of revenue shall incorporate into the agency's regular audit cycle a reconciliation of the number of tires sold and the amount of revenue collected by the businesses selling new replacement vehicle tires at retail. The department of revenue shall collect on the business excise tax return from the businesses selling new replacement vehicle tires at retail:

(a) The number of tires sold; and

(b) The fee levied in this section.

(3) All other applicable provisions of chapter 82.32 RCW have full force and application with respect to the fee imposed under this section. The department of revenue shall administer this section.

(4) For the purposes of this section, "new replacement vehicle tires" means tires that are newly manufactured for vehicle purposes and does not include retreaded vehicle tires. [2009 c 261 § 2; 2005 c 354 § 2; 1989 c 431 § 92; 1985 c 345 § 5.]

Intent—2009 c 261: "The legislature restates its goal to fully clean up unauthorized waste tire piles in Washington state in an expeditious fashion. In partnership with local governments and the private sector, the legislature encourages ongoing efforts to prevent the creation of future unauthorized waste tire piles. The legislature notes a positive trend in tire recycling in recent years and encourages all parties to continue these strong recycling efforts." [2009 c 261 § 1.]

Finding—Intent—2005 c 354: "The legislature finds that discarded tires in unauthorized dump sites pose a health and safety risk to the public. Many of these tire piles have been in existence for a significant amount of time and are a continuing challenge to state and local officials responsible for cleaning up unauthorized dump sites and preventing further accumulation of waste tires. Therefore it is the intent of the legislature to document the extent of the problem, create and fund an effective program to eliminate unauthorized tire piles, and minimize potential future problems and costs." [2005 c 354 § 1.]

Severability—2005 c 354: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2005 c 354 § 11.]

Effective date—2005 c 354: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2005." [2005 c 354 § 12.]

70.95.521 Waste tire removal account. The waste tire removal account is created in the state treasury. Expenditures from the account may be used for the cleanup of unauthorized waste tire piles, measures that prevent future accumulation of unauthorized waste tire piles, and road wear related maintenance on state and local public highways. During the 2007-2009 fiscal biennium, the legislature may transfer from the waste tire removal account to the motor vehicle fund such amounts as reflect the excess fund balance of the waste tire removal account. [2009 c 261 § 3; 2007 c 518 § 708; 2005 c 354 § 3.]

Intent—2009 c 261: See note following RCW 70.95.510.

Severability—Effective date—2007 c 518: See notes following RCW 46.68.170.

Finding—Intent—Severability—Effective date—2005 c 354: See notes following RCW 70.95.510.

70.95.530 Waste tire removal account—Use—Report to the legislature. (1) Moneys in the waste tire removal account may be appropriated to the department of ecology:

(a) To provide for funding to state and local governments for the removal of discarded vehicle tires from unauthorized tire dump sites; and

(b) To accomplish the other purposes of RCW 70.95.020 as they relate to waste tire cleanup under this chapter.

(2) In spending funds in the account under this section, the department of ecology shall identify communities with the most severe problems with waste tires and provide funds first to those communities to remove accumulations of waste tires.

(3) On September 1st of even-numbered years, the department of ecology shall provide a report to the house [of representatives] and senate transportation committees on the progress being made on the cleanup of unauthorized waste tire piles in the state and efforts underway to prevent the formation of future unauthorized waste tire piles. The report must detail any additional unauthorized waste tire piles discovered since the last report and present a plan to clean up these new unauthorized waste tire piles if they have not already done so, as well as include a listing of authorized waste tire piles and transporters. The report must also include the status of funds available to the program and a needs assessment of the program. On September 1, 2010, the department shall also make recommendations to the committees for an ongoing program to prevent the formation of future unauthorized waste tire piles. Such a program, if required, must include joint efforts with local governments and the tire industry. [2009 c 261 § 5; 2005 c 354 § 5; 1988 c 250 § 1; 1985 c 345 § 7.]

Intent—2009 c 261: See note following RCW 70.95.510.

Finding—Intent—Severability—Effective date—2005 c 354: See notes following RCW 70.95.510.

70.95.532 Waste tire removal account—Use of moneys—Transfer of any balance in excess of one million dollars to the motor vehicle account. (1) All receipts from tire fees imposed under RCW 70.95.510, except as provided in subsection (2) of this section, must be deposited in the waste tire removal account created under RCW 70.95.521. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used for the cleanup of unauthorized waste tire piles and measures that prevent future accumulation of unauthorized waste tire piles.

(2) On September 1st of odd-numbered years, the state treasurer must transfer any cash balance in excess of one million dollars from the waste tire removal account created under RCW 70.95.521 to the motor vehicle account for the purpose of road wear related maintenance on state and local public highways. [2009 c 261 § 4.]

Intent—2009 c 261: See note following RCW 70.95.510.

70.95.555 Waste tires—License for transport or storage business—Requirements. Any person engaged in the business of transporting or storing waste tires shall be licensed by the department. To obtain a license, each applicant must:

(1) Provide assurances that the applicant is in compliance with this chapter and the rules regarding waste tire storage and transportation;

(2) Accept liability for and authorize the department to recover any costs incurred in any cleanup of waste tires transported or newly stored by the applicant in violation of this section, or RCW 70.95.560, 70.95.515, or 70.95.570, or rules adopted thereunder, after July 1, 2005;

(3) After January 1, 2006, for waste tires transported or stored before July 1, 2005, or for waste tires transported or stored after July 1, 2005, post a bond in an amount to be determined by the department sufficient to cover the liability for the cost of cleanup of the transported or stored waste tires, in favor of the state of Washington. In lieu of the bond, the applicant may submit financial assurances acceptable to the department;

(4) Be registered in the state of Washington as a business and be in compliance with all state laws, rules, and local ordinances;

(5) Have a federal tax identification number and be in compliance with all applicable federal codes and regulations; and

(6) Report annually to the department the amount of tires transported and their disposition. Failure to report shall result in revocation of the license. [2009 c 261 § 6; 2005 c 354 § 6; 1988 c 250 § 4.]

Intent—2009 c 261: See note following RCW 70.95.510.

Finding—Intent—Severability—Effective date—2005 c 354: See notes following RCW 70.95.510.

70.95.725 Paper conservation program—Paper recycling program. By July 1, 2010, each state agency shall develop and implement:

(1) A paper conservation program. Each state agency shall endeavor to conserve paper by at least thirty percent of their current paper use.

(2) A paper recycling program to encourage recycling of all paper products with the goal of recycling one hundred percent of all copy and printing paper in all buildings with twenty-five employees or more.

(3) For the purposes of this section, "state agencies" include, but are not limited to, colleges, universities, offices of elected and appointed officers, the supreme court, court of appeals, and administrative departments of state government. [2009 c 356 § 1.]

Chapter 70.95N RCW
ELECTRONIC PRODUCT RECYCLING

Sections

70.95N.350 Entity must be registered as a collector to act as a collector in a plan—Disposition of electronic products received by a registered collector—Recordkeeping requirements—Display of notice—Site visits.

70.95N.350 Entity must be registered as a collector to act as a collector in a plan—Disposition of electronic products received by a registered collector—Recordkeeping requirements—Display of notice—Site visits. (1) Only an entity registered as a collector with the department may act as a collector in a plan. All covered electronic products received by a registered collector must be submitted to a plan. Fully functioning computers that are received by a registered collector in working order may be sold or donated as whole products by the collector for reuse. Computers that require repair to make them a fully functioning unit may only be repaired on-site at the collector's place of business by the registered collector for reuse according to its original purpose.

(2) Registered collectors may use whole parts gleaned from collected computers or new parts for making repairs as long as there is a part-for-part exchange with nonfunctioning computers submitted to a plan.

(3) Registered collectors may not include computers that are gleaned for reuse in the weight totals for compensation by the plan.

(4) Registered collectors must maintain a record of computers sold or donated by the collector for a period of three years.

(5) Registered collectors must display a notice at the point of collection that computers received by the collector may be repaired and sold or donated as a fully functioning computer rather than submitted to a processor for recycling.

(6) The authority, authorized party, or the department may conduct site visits of all registered collectors that reuse or refurbish computers and who have an agreement with the authority or authorized party to provide collection services. If the authority or authorized party finds that a collector is not providing services in compliance with this chapter, the authority or authorized party shall report that finding to the department for enforcement action. [2009 c 285 § 1.]

Chapter 70.96A RCW
TREATMENT FOR ALCOHOLISM, INTOXICATION, AND DRUG ADDICTION

Sections

70.96A.037 Chemical dependency specialist services—To be available at children and family services offices—Training in uniform screening.
70.96A.350 Criminal justice treatment account.

70.96A.037 Chemical dependency specialist services—To be available at children and family services offices—Training in uniform screening. (1) The department of social and health services shall contract for chemical dependency specialist services at division of children and family services offices to enhance the timeliness and quality of child protective services assessments and to better connect families to needed treatment services.

(2) The chemical dependency specialist's duties may include, but are not limited to: Conducting on-site chemical dependency screening and assessment, facilitating progress reports to department social workers, in-service training of department social workers and staff on substance abuse issues, referring clients from the department to treatment providers, and providing consultation on cases to department social workers.

(3) The department of social and health services shall provide training in and ensure that each case-carrying social worker is trained in uniform screening for mental health and chemical dependency. [2009 c 579 § 1; 2005 c 504 § 305.]

Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504: See notes following RCW 71.05.027.

Alphabetization—Correction of references—2005 c 504: See note following RCW 71.05.020.

70.96A.350 Criminal justice treatment account. (1) The criminal justice treatment account is created in the state treasury. Moneys in the account may be expended solely for: (a) Substance abuse treatment and treatment support services for offenders with an addiction or a substance abuse problem that, if not treated, would result in addiction, against whom charges are filed by a prosecuting attorney in Washington state; (b) the provision of drug and alcohol treatment services and treatment support services for nonviolent offenders within a drug court program; (c) the administrative and overhead costs associated with the operation of a drug court; and (d) during the 2007-2009 biennium, operation of the integrated crisis response and intensive case management pilots contracted with the department of social and health services division of alcohol and substance abuse. Moneys in the account may be spent only after appropriation.

(2) For purposes of this section:

(a) "Treatment" means services that are critical to a participant's successful completion of his or her substance abuse treatment program, but does not include the following services: Housing other than that provided as part of an inpatient substance abuse treatment program, vocational training, and mental health counseling; and

(b) "Treatment support" means transportation to or from inpatient or outpatient treatment services when no viable alternative exists, and child care services that are necessary to

ensure a participant's ability to attend outpatient treatment sessions.

(3) Revenues to the criminal justice treatment account consist of: (a) Funds transferred to the account pursuant to this section; and (b) any other revenues appropriated to or deposited in the account.

(4)(a) For the fiscal biennium beginning July 1, 2003, the state treasurer shall transfer eight million nine hundred fifty thousand dollars from the general fund into the criminal justice treatment account, divided into eight equal quarterly payments. For the fiscal year beginning July 1, 2005, and each subsequent fiscal year, the state treasurer shall transfer eight million two hundred fifty thousand dollars from the general fund to the criminal justice treatment account, divided into four equal quarterly payments. For the fiscal year beginning July 1, 2006, and each subsequent fiscal year, the amount transferred shall be increased on an annual basis by the implicit price deflator as published by the federal bureau of labor statistics.

(b) In each odd-numbered year, the legislature shall appropriate the amount transferred to the criminal justice treatment account in (a) of this subsection to the division of alcohol and substance abuse for the purposes of subsection (5) of this section.

(5) Moneys appropriated to the division of alcohol and substance abuse from the criminal justice treatment account shall be distributed as specified in this subsection. The department shall serve as the fiscal agent for purposes of distribution. Until July 1, 2004, the department may not use moneys appropriated from the criminal justice treatment account for administrative expenses and shall distribute all amounts appropriated under subsection (4)(b) of this section in accordance with this subsection. Beginning in July 1, 2004, the department may retain up to three percent of the amount appropriated under subsection (4)(b) of this section for its administrative costs.

(a) Seventy percent of amounts appropriated to the division from the account shall be distributed to counties pursuant to the distribution formula adopted under this section. The division of alcohol and substance abuse, in consultation with the department of corrections, the sentencing guidelines commission, the Washington state association of counties, the Washington state association of drug court professionals, the superior court judges' association, the Washington association of prosecuting attorneys, representatives of the criminal defense bar, representatives of substance abuse treatment providers, and any other person deemed by the division to be necessary, shall establish a fair and reasonable methodology for distribution to counties of moneys in the criminal justice treatment account. County or regional plans submitted for the expenditure of formula funds must be approved by the panel established in (b) of this subsection.

(b) Thirty percent of the amounts appropriated to the division from the account shall be distributed as grants for purposes of treating offenders against whom charges are filed by a county prosecuting attorney. The division shall appoint a panel of representatives from the Washington association of prosecuting attorneys, the Washington association of sheriffs and police chiefs, the superior court judges' association, the Washington state association of counties, the Washington defender's association or the Washington association of criminal defense lawyers, the department of corrections, the Washington state association of drug court professionals, substance abuse treatment providers, and the division. The panel shall review county or regional plans for funding under (a) of this subsection and grants approved under this subsection. The panel shall attempt to ensure that treatment as funded by the grants is available to offenders statewide.

(6) The county alcohol and drug coordinator, county prosecutor, county sheriff, county superior court, a substance abuse treatment provider appointed by the county legislative authority, a member of the criminal defense bar appointed by the county legislative authority, and, in counties with a drug court, a representative of the drug court shall jointly submit a plan, approved by the county legislative authority or authorities, to the panel established in subsection (5)(b) of this section, for disposition of all the funds provided from the criminal justice treatment account within that county. The funds shall be used solely to provide approved alcohol and substance abuse treatment pursuant to RCW 70.96A.090, treatment support services, and for the administrative and overhead costs associated with the operation of a drug court.

(a) No more than ten percent of the total moneys received under subsections (4) and (5) of this section by a county or group of counties participating in a regional agreement shall be spent on the administrative and overhead costs associated with the operation of a drug court.

(b) No more than ten percent of the total moneys received under subsections (4) and (5) of this section by a county or group of counties participating in a regional agreement shall be spent for treatment support services.

(7) Counties are encouraged to consider regional agreements and submit regional plans for the efficient delivery of treatment under this section.

(8) Moneys allocated under this section shall be used to supplement, not supplant, other federal, state, and local funds used for substance abuse treatment.

(9) Counties must meet the criteria established in RCW 2.28.170(3)(b).

(10) The authority under this section to use funds from the criminal justice treatment account for the administrative and overhead costs associated with the operation of a drug court expires June 30, 2013. [2009 c 479 § 50; 2009 c 445 § 1; 2008 c 329 § 918; 2003 c 379 § 11; 2002 c 290 § 4.]

Reviser's note: This section was amended by 2009 c 445 § 1 and by 2009 c 479 § 50, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2009 c 479: See note following RCW 2.56.030.

Severability—Effective date—2008 c 329: See notes following RCW 28B.105.110.

Severability—Effective dates—2003 c 379: See notes following RCW 9.94A.728.

Effective date—2002 c 290 §§ 1, 4-6, 12, 13, 26, and 27: "Sections 1, 4 through 6, 12, 13, 26, and 27 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [April 1, 2002]." [2002 c 290 § 32.]

Intent—2002 c 290: See note following RCW 9.94A.517.

Severability—2002 c 290: See RCW 9.94A.924.

Chapter 70.103 RCW
LEAD-BASED PAINT

Sections

70.103.020 Definitions.

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

(1) "Abatement" means any measure or set of measures designed to permanently eliminate lead-based paint hazards.

(a) Abatement includes, but is not limited to:

(i) The removal of paint and dust, the permanent enclosure or encapsulation of lead-based paint, the replacement of painted surfaces or fixtures, or the removal or permanent covering of soil, when lead-based paint hazards are present in such paint, dust, or soil; and

(ii) All preparation, cleanup, disposal, and postabatement clearance testing activities associated with such measures.

(b) Specifically, abatement includes, but is not limited to:

(i) Projects for which there is a written contract or other documentation, which provides that an individual or firm will be conducting activities in or to a residential dwelling or child-occupied facility that:

(A) Shall result in the permanent elimination of lead-based paint hazards; or

(B) Are designed to permanently eliminate lead-based paint hazards and are described in (a)(i) and (ii) of this subsection;

(ii) Projects resulting in the permanent elimination of lead-based paint hazards, conducted by certified firms or individuals, unless such projects are covered by (c) of this subsection;

(iii) Projects resulting in the permanent elimination of lead-based paint hazards, conducted by firms or individuals who, through their company name or promotional literature, represent, advertise, or hold themselves out to be in the business of performing lead-based paint activities as identified and defined by this section, unless such projects are covered by (c) of this subsection; or

(iv) Projects resulting in the permanent elimination of lead-based paint hazards, that are conducted in response to state or local abatement orders.

(c) Abatement does not include renovation, remodeling, landscaping, or other activities, when such activities are not designed to permanently eliminate lead-based paint hazards, but, instead, are designed to repair, restore, or remodel a given structure or dwelling, even though these activities may incidentally result in a reduction or elimination of lead-based paint hazards. Furthermore, abatement does not include interim controls, operations and maintenance activities, or other measures and activities designed to temporarily, but not permanently, reduce lead-based paint hazards.

(2) "Accredited training program" means a training program that has been accredited by the department to provide training for individuals engaged in lead-based paint activities.

(3) "Certified abatement worker" means an individual who has been trained by an accredited training program, meets all the qualifications established by the department, and is certified by the department to perform abatements.

(4) "Certified firm" includes a company, partnership, corporation, sole proprietorship, association, agency, or other business entity that meets all the qualifications established by the department and performs lead-based paint activities to which the department has issued a certificate.

(5) "Certified inspector" means an individual who has been trained by an accredited training program, meets all the qualifications established by the department, and is certified by the department to conduct inspections.

(6) "Certified project designer" means an individual who has been trained by an accredited training program, meets all the qualifications established by the department, and is certified by the department to prepare abatement project designs, occupant protection plans, and abatement reports.

(7) "Certified risk assessor" means an individual who has been trained by an accredited training program, meets all the qualifications established by the department, and is certified by the department to conduct risk assessments and sample for the presence of lead in dust and soil for the purposes of abatement clearance testing.

(8) "Certified supervisor" means an individual who has been trained by an accredited training program, meets all the qualifications established by the department, and is certified by the department to supervise and conduct abatements, and to prepare occupant protection plans and abatement reports.

(9) "Department" means the Washington state department of commerce.

(10) "Director" means the director of the Washington state department of commerce.

(11) "Federal laws and rules" means:

(a) Title IV, toxic substances control act (15 U.S.C. Sec. 2681 et seq.) and the rules adopted by the United States environmental protection agency under that law for authorization of state programs;

(b) Any regulations or requirements adopted by the United States department of housing and urban development regarding eligibility for grants to states and local governments; and

(c) Any other requirements adopted by a federal agency with jurisdiction over lead-based paint hazards.

(12) "Lead-based paint" means paint or other surface coatings that contain lead equal to or in excess of 1.0 milligrams per square centimeter or more than 0.5 percent by weight.

(13) "Lead-based paint activity" includes inspection, testing, risk assessment, lead-based paint hazard reduction project design or planning, or abatement of lead-based paint hazards.

(14) "Lead-based paint hazard" means any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, or lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects as identified by the administrator of the United States environmental protection agency under the toxic substances control act, section 403.

(15) "Person" includes an individual, corporation, firm, partnership, or association, an Indian tribe, state, or political subdivision of a state, and a state department or agency.

(16) "Risk assessment" means:

(a) An on-site investigation to determine the existence, nature, severity, and location of lead-based paint hazards; and

(b) The provision of a report by the individual or the firm conducting the risk assessment, explaining the results of the investigation and options for reducing lead-based paint hazards.

(17) "State program" means a state administered lead-based paint activities certification and training program that meets the federal environmental protection agency requirements. [2009 c 565 § 49; 2003 c 322 § 2.]

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

Chapter 70.104 RCW
PESTICIDES—HEALTH HAZARDS

Sections

70.104.020 "Pesticide" defined.
70.104.030 Powers and duties of department of health.
70.104.050 Investigation of human exposure to pesticides.

70.104.020 "Pesticide" defined. For the purposes of this chapter pesticide means, but is not limited to:

(1) Any substance or mixture of substances intended to prevent, destroy, control, repel, or mitigate any insect, rodent, nematode, snail, slug, fungus, weed and any other form of plant or animal life or virus, except virus on or in a living human being or other animal, which is normally considered to be a pest or which the director of agriculture may declare to be a pest; or

(2) Any substance or mixture of substances intended to be used as a plant regulator, defoliant or desiccant; or

(3) Any spray adjuvant, such as a wetting agent, spreading agent, deposit builder, adhesive, emulsifying agent, deflocculating agent, water modifier, or similar agent with or without toxic properties of its own intended to be used with any other pesticide as an aid to the application or effect thereof, and sold in a package or container separate from that of the pesticide with which it is to be used; or

(4) Any fungicide, rodenticide, herbicide, insecticide, and nematocide. [2009 c 549 § 1026; 1971 ex.s. c 41 § 2.]

70.104.030 Powers and duties of department of health. (1) The department of health may investigate all suspected human cases of pesticide poisoning and such cases of suspected pesticide poisoning of animals that may relate to human illness. The department shall establish time periods by rule to determine investigation response time. Time periods shall range from immediate to forty-eight hours to initiate an investigation, depending on the severity of the case or suspected case of pesticide poisoning.

In order to adequately investigate such cases, the department shall have the power to:

(a) Take all necessary samples and human or animal tissue specimens for diagnostic purposes: PROVIDED, That tissue, if taken from a living human, shall be taken from a living human only with the consent of a person legally qualified to give such consent;

(b) Secure any and all such information as may be necessary to adequately determine the nature and causes of any case of pesticide poisoning.

(2) The department shall immediately notify the department of agriculture, the department of labor and industries, and other appropriate agencies of the results of its investigation for such action as the other departments or agencies deem appropriate. The notification of such investigations and their results may include recommendations for further action by the appropriate department or agency. [2009 c 495 § 10; 1991 c 3 § 357; 1989 c 380 § 71; 1971 ex.s. c 41 § 3.]

Effective date—2009 c 495: See note following RCW 43.20.050.

Effective date—1989 c 380 §§ 69, 71-73: See note following RCW 70.104.090.

Severability—1989 c 380: See RCW 15.58.942.

70.104.050 Investigation of human exposure to pesticides. The department of health shall investigate human exposure to pesticides according to the degree of risk that the exposure presents to the individual and the greater population as well as the level of funding appropriated in the operating budget, and in order to carry out such investigations shall have authority to secure and analyze appropriate specimens of human tissue and samples representing sources of possible exposure. [2009 c 495 § 11; 1991 c 3 § 359; 1971 ex.s. c 41 § 5.]

Effective date—2009 c 495: See note following RCW 43.20.050.

Chapter 70.105 RCW
HAZARDOUS WASTE MANAGEMENT

Sections

70.105.010 Definitions.

70.105.010 Definitions. The words and phrases defined in this section shall have the meanings indicated when used in this chapter unless the context clearly requires otherwise.

(1) "Dangerous wastes" means any discarded, useless, unwanted, or abandoned substances, including but not limited to certain pesticides, or any residues or containers of such substances which are disposed of in such quantity or concentration as to pose a substantial present or potential hazard to human health, wildlife, or the environment because such wastes or constituents or combinations of such wastes:

(a) Have short-lived, toxic properties that may cause death, injury, or illness or have mutagenic, teratogenic, or carcinogenic properties; or

(b) Are corrosive, explosive, flammable, or may generate pressure through decomposition or other means.

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

(3) "Designated zone facility" means any facility that requires an interim or final status permit under rules adopted under this chapter and that is not a preempted facility as defined in this section.

(4) "Director" means the director of the department of ecology or the director's designee.

(5) "Disposal site" means a geographical site in or upon which hazardous wastes are disposed of in accordance with the provisions of this chapter.

(6) "Dispose or disposal" means the discarding or abandoning of hazardous wastes or the treatment, decontamination, or recycling of such wastes once they have been discarded or abandoned.

(7) "Extremely hazardous waste" means any dangerous waste which[:]

(a) Will persist in a hazardous form for several years or more at a disposal site and which in its persistent form

(i) Presents a significant environmental hazard and may be concentrated by living organisms through a food chain or may affect the genetic make-up of human beings or wildlife, and

(ii) Is highly toxic to human beings or wildlife

(b) If disposed of at a disposal site in such quantities as would present an extreme hazard to human beings or the environment.

(8) "Facility" means all contiguous land and structures, other appurtenances, and improvements on the land used for recycling, storing, treating, incinerating, or disposing of hazardous waste.

(9) "Hazardous household substances" means those substances identified by the department as hazardous household substances in the guidelines developed under RCW 70.105.220.

(10) "Hazardous substances" means any liquid, solid, gas, or sludge, including any material, substance, product, commodity, or waste, regardless of quantity, that exhibits any of the characteristics or criteria of hazardous waste as described in rules adopted under this chapter.

(11) "Hazardous waste" means and includes all dangerous and extremely hazardous waste, including substances composed of both radioactive and hazardous components.

(12) "Local government" means a city, town, or county.

(13) "Moderate-risk waste" means (a) any waste that exhibits any of the properties of hazardous waste but is exempt from regulation under this chapter solely because the waste is generated in quantities below the threshold for regulation, and (b) any household wastes which are generated from the disposal of substances identified by the department as hazardous household substances.

(14) "Person" means any person, firm, association, county, public or municipal or private corporation, agency, or other entity whatsoever.

(15) "Pesticide" shall have the meaning of the term as defined in RCW 15.58.030 as now or hereafter amended.

(16) "Preempted facility" means any facility that includes as a significant part of its activities any of the following operations: (a) Landfill, (b) incineration, (c) land treatment, (d) surface impoundment to be closed as a landfill, or (e) waste pile to be closed as a landfill.

(17) "Service charge" means an assessment imposed under RCW 70.105.280 against those facilities that store, treat, incinerate, or dispose of dangerous or extremely hazardous waste that contains both a nonradioactive hazardous component and a radioactive component. Service charges shall also apply to facilities undergoing closure under this chapter in those instances where closure entails the physical characterization of remaining wastes which contain both a nonradioactive hazardous component and a radioactive component or the management of such wastes through treatment or removal, except any commercial low-level radioactive waste facility.

(18) "Solid waste advisory committee" means the same advisory committee as per RCW 70.95.040 through 70.95.070. [2009 c 549 § 1027; 1989 c 376 § 1; 1987 c 488 § 1; 1985 c 448 § 1; 1975-'76 2nd ex.s. c 101 § 1.]

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

Severability—1989 c 376: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1989 c 376 § 4.]

Severability—1985 c 448: See note following RCW 70.105.005.

Chapter 70.105D RCW
HAZARDOUS WASTE CLEANUP— MODEL TOXICS CONTROL ACT

Sections

70.105D.030 Department's powers and duties.
70.105D.070 Toxics control accounts.

70.105D.030 Department's powers and duties. (1) The department may exercise the following powers in addition to any other powers granted by law:

(a) Investigate, provide for investigating, or require potentially liable persons to investigate any releases or threatened releases of hazardous substances, including but not limited to inspecting, sampling, or testing to determine the nature or extent of any release or threatened release. If there is a reasonable basis to believe that a release or threatened release of a hazardous substance may exist, the department's authorized employees, agents, or contractors may enter upon any property and conduct investigations. The department shall give reasonable notice before entering property unless an emergency prevents such notice. The department may by subpoena require the attendance or testimony of witnesses and the production of documents or other information that the department deems necessary;

(b) Conduct, provide for conducting, or require potentially liable persons to conduct remedial actions (including investigations under (a) of this subsection) to remedy releases or threatened releases of hazardous substances. In carrying out such powers, the department's authorized employees, agents, or contractors may enter upon property. The department shall give reasonable notice before entering property unless an emergency prevents such notice. In conducting, providing for, or requiring remedial action, the department shall give preference to permanent solutions to the maximum extent practicable and shall provide for or require adequate monitoring to ensure the effectiveness of the remedial action;

(c) Indemnify contractors retained by the department for carrying out investigations and remedial actions, but not for any contractor's reckless or willful misconduct;

(d) Carry out all state programs authorized under the federal cleanup law and the federal resource, conservation, and recovery act, 42 U.S.C. Sec. 6901 et seq., as amended;

(e) Classify substances as hazardous substances for purposes of RCW 70.105D.020 and classify substances and products as hazardous substances for purposes of RCW 82.21.020(1);

(f) Issue orders or enter into consent decrees or agreed orders that include, or issue written opinions under (i) of this subsection that may be conditioned upon, environmental covenants where necessary to protect human health and the environment from a release or threatened release of a hazardous substance from a facility. Prior to establishing an environmental covenant under this subsection, the department shall consult with and seek comment from a city or county department with land use planning authority for real property subject to the environmental covenant;

(g) Enforce the application of permanent and effective institutional controls that are necessary for a remedial action to be protective of human health and the environment and the notification requirements established in RCW 70.105D.110, and impose penalties for violations of that section consistent with RCW 70.105D.050;

(h) Require holders to conduct remedial actions necessary to abate an imminent or substantial endangerment pursuant to RCW 70.105D.020(17)(b)(ii)(C);

(i) Provide informal advice and assistance to persons regarding the administrative and technical requirements of this chapter. This may include site-specific advice to persons who are conducting or otherwise interested in independent remedial actions. Any such advice or assistance shall be advisory only, and shall not be binding on the department. As a part of providing this advice and assistance for independent remedial actions, the department may prepare written opinions regarding whether the independent remedial actions or proposals for those actions meet the substantive requirements of this chapter or whether the department believes further remedial action is necessary at the facility. Nothing in this chapter may be construed to preclude the department from issuing a written opinion on whether further remedial action is necessary at any portion of the real property located within a facility, even if further remedial action is still necessary elsewhere at the same facility. Such a written opinion on a portion of a facility must also provide an opinion on the status of the facility as a whole. The department may collect, from persons requesting advice and assistance, the costs incurred by the department in providing such advice and assistance; however, the department shall, where appropriate, waive collection of costs in order to provide an appropriate level of technical assistance in support of public participation. The state, the department, and officers and employees of the state are immune from all liability, and no cause of action of any nature may arise from any act or omission in providing, or failing to provide, informal advice and assistance; and

(j) Take any other actions necessary to carry out the provisions of this chapter, including the power to adopt rules under chapter 34.05 RCW.

(2) The department shall immediately implement all provisions of this chapter to the maximum extent practicable, including investigative and remedial actions where appropriate. The department shall adopt, and thereafter enforce, rules under chapter 34.05 RCW to:

(a) Provide for public participation, including at least (i) public notice of the development of investigative plans or remedial plans for releases or threatened releases and (ii) concurrent public notice of all compliance orders, agreed orders, enforcement orders, or notices of violation;

(b) Establish a hazard ranking system for hazardous waste sites;

(c) Provide for requiring the reporting by an owner or operator of releases of hazardous substances to the environment that may be a threat to human health or the environment within ninety days of discovery, including such exemptions from reporting as the department deems appropriate, however this requirement shall not modify any existing requirements provided for under other laws;

(d) Establish reasonable deadlines not to exceed ninety days for initiating an investigation of a hazardous waste site after the department receives notice or otherwise receives information that the site may pose a threat to human health or the environment and other reasonable deadlines for remedying releases or threatened releases at the site;

(e) Publish and periodically update minimum cleanup standards for remedial actions at least as stringent as the cleanup standards under section 121 of the federal cleanup law, 42 U.S.C. Sec. 9621, and at least as stringent as all applicable state and federal laws, including health-based standards under state and federal law; and

(f) Apply industrial clean-up standards at industrial properties. Rules adopted under this subsection shall ensure that industrial properties cleaned up to industrial standards cannot be converted to nonindustrial uses without approval from the department. The department may require that a property cleaned up to industrial standards is cleaned up to a more stringent applicable standard as a condition of conversion to a nonindustrial use. Industrial clean-up standards may not be applied to industrial properties where hazardous substances remaining at the property after remedial action pose a threat to human health or the environment in adjacent nonindustrial areas.

(3) To achieve and protect the state's long-term ecological health, the department shall prioritize sufficient funding to clean up hazardous waste sites and prevent the creation of future hazards due to improper disposal of toxic wastes, and create financing tools to clean up large-scale hazardous waste sites requiring multiyear commitments. To effectively monitor toxic accounts expenditures, the department shall develop a comprehensive ten-year financing report that identifies long-term remedial action project costs, tracks expenses, and projects future needs.

(4) Before December 20th of each even-numbered year, the department shall:

(a) Develop a comprehensive ten-year financing report in coordination with all local governments with clean-up responsibilities that identifies the projected biennial hazardous waste site remedial action needs that are eligible for funding from the local toxics control account;

(b) Work with local governments to develop working capital reserves to be incorporated in the ten-year financing report;

(c) Identify the projected remedial action needs for orphaned, abandoned, and other clean-up sites that are eligible for funding from the state toxics control account;

(d) Project the remedial action need, cost, revenue, and any recommended working capital reserve estimate to the next biennium's long-term remedial action needs from both the local toxics control account and the state toxics control account, and submit this information to the appropriate stand-

ing fiscal and environmental committees of the senate and house of representatives. This submittal must also include a ranked list of such remedial action projects for both accounts; and

(e) Provide the legislature and the public each year with an accounting of the department's activities supported by appropriations from the state and local toxics control accounts, including a list of known hazardous waste sites and their hazard rankings, actions taken and planned at each site, how the department is meeting its waste management priorities under RCW 70.105.150, and all funds expended under this chapter.

(5) The department shall establish a program to identify potential hazardous waste sites and to encourage persons to provide information about hazardous waste sites.

(6) For all facilities where an environmental covenant has been required under subsection (1)(f) of this section, including all facilities where the department has required an environmental covenant under an order, agreed order, or consent decree, or as a condition of a written opinion issued under the authority of subsection (1)(i) of this section, the department shall periodically review the environmental covenant for effectiveness. Except as otherwise provided in (c) of this subsection, the department shall conduct a review at least once every five years after an environmental covenant is recorded.

(a) The review shall consist of, at a minimum:

(i) A review of the title of the real property subject to the environmental covenant to determine whether the environmental covenant was properly recorded and, if applicable, amended or terminated;

(ii) A physical inspection of the real property subject to the environmental covenant to determine compliance with the environmental covenant, including whether any development or redevelopment of the real property has violated the terms of the environmental covenant; and

(iii) A review of the effectiveness of the environmental covenant in limiting or prohibiting activities that may interfere with the integrity of the remedial action or that may result in exposure to or migration of hazardous substances. This shall include a review of available monitoring data.

(b) If an environmental covenant has been amended or terminated without proper authority, or if the terms of an environmental covenant have been violated, or if the environmental covenant is no longer effective in limiting or prohibiting activities that may interfere with the integrity of the remedial action or that may result in exposure to or migration of hazardous substances, then the department shall take any and all appropriate actions necessary to ensure compliance with the environmental covenant and the policies and requirements of this chapter.

(c) For facilities where an environmental covenant required by the department under subsection (1)(f) of this section was required before July 1, 2007, the department shall:

(i) Enter all required information about the environmental covenant into the registry established under RCW 64.70.120 by June 30, 2008;

(ii) For those facilities where more than five years has elapsed since the environmental covenant was required and the department has yet to conduct a review, conduct an initial review according to the following schedule:

(A) By December 30, 2008, fifty facilities;

(B) By June 30, 2009, fifty additional facilities; and

(C) By June 30, 2010, the remainder of the facilities;

(iii) Once this initial review has been completed, conduct subsequent reviews at least once every five years. [2009 c 560 § 10. Prior: 2007 c 446 § 1; 2007 c 225 § 1; 2007 c 104 § 19; 2002 c 288 § 3; 2001 c 291 § 401; 1997 c 406 § 3; 1995 c 70 § 2; prior: 1994 c 257 § 11; 1994 c 254 § 3; 1989 c 2 § 3 (Initiative Measure No. 97, approved November 8, 1988).]

Intent—Effective date—Disposition of property and funds—Assignment/delegation of contractual rights or duties—2009 c 560: See notes following RCW 18.06.080.

Application—Construction—Severability—2007 c 104: See RCW 64.70.015 and 64.70.900.

Effective date—2002 c 288 §§ 2-4: See note following RCW 70.105D.110.

Severability—2002 c 288: See note following RCW 70.105D.010.

Part headings not law—Effective date—2001 c 291: See notes following RCW 43.20A.360.

Findings—Intent—1997 c 406: See note following RCW 70.105D.020.

Severability—1994 c 257: See note following RCW 36.70A.270.

70.105D.070 Toxics control accounts. (1) The state toxics control account and the local toxics control account are hereby created in the state treasury.

(2) The following moneys shall be deposited into the state toxics control account: (a) Those revenues which are raised by the tax imposed under RCW 82.21.030 and which are attributable to that portion of the rate equal to thirty-three one-hundredths of one percent; (b) the costs of remedial actions recovered under this chapter or chapter 70.105A RCW; (c) penalties collected or recovered under this chapter; and (d) any other money appropriated or transferred to the account by the legislature. Moneys in the account may be used only to carry out the purposes of this chapter, including but not limited to the following activities:

(i) The state's responsibility for hazardous waste planning, management, regulation, enforcement, technical assistance, and public education required under chapter 70.105 RCW;

(ii) The state's responsibility for solid waste planning, management, regulation, enforcement, technical assistance, and public education required under chapter 70.95 RCW;

(iii) The hazardous waste cleanup program required under this chapter;

(iv) State matching funds required under the federal cleanup law;

(v) Financial assistance for local programs in accordance with chapters 70.95, 70.95C, 70.95I, and 70.105 RCW;

(vi) State government programs for the safe reduction, recycling, or disposal of hazardous wastes from households, small businesses, and agriculture;

(vii) Hazardous materials emergency response training;

(viii) Water and environmental health protection and monitoring programs;

(ix) Programs authorized under chapter 70.146 RCW;

(x) A public participation program, including regional citizen advisory committees;

(xi) Public funding to assist potentially liable persons to pay for the costs of remedial action in compliance with cleanup standards under RCW 70.105D.030(2)(e) but only when the amount and terms of such funding are established under a settlement agreement under RCW 70.105D.040(4) and when the director has found that the funding will achieve both (A) a substantially more expeditious or enhanced cleanup than would otherwise occur, and (B) the prevention or mitigation of unfair economic hardship;

(xii) Development and demonstration of alternative management technologies designed to carry out the hazardous waste management priorities of RCW 70.105.150; and

(xiii) During the 2009-2011 fiscal biennium, shoreline update technical assistance.

(3) The following moneys shall be deposited into the local toxics control account: Those revenues which are raised by the tax imposed under RCW 82.21.030 and which are attributable to that portion of the rate equal to thirty-seven one-hundredths of one percent.

(a) Moneys deposited in the local toxics control account shall be used by the department for grants or loans to local governments for the following purposes in descending order of priority:

(i) Remedial actions;

(ii) Hazardous waste plans and programs under chapter 70.105 RCW;

(iii) Solid waste plans and programs under chapters 70.95, 70.95C, 70.95I, and 70.105 RCW;

(iv) Funds for a program to assist in the assessment and cleanup of sites of methamphetamine production, but not to be used for the initial containment of such sites, consistent with the responsibilities and intent of RCW 69.50.511; and

(v) Cleanup and disposal of hazardous substances from abandoned or derelict vessels, defined for the purposes of this section as vessels that have little or no value and either have no identified owner or have an identified owner lacking financial resources to clean up and dispose of the vessel, that pose a threat to human health or the environment.

(b) Funds for plans and programs shall be allocated consistent with the priorities and matching requirements established in chapters 70.105, 70.95C, 70.95I, and 70.95 RCW, except that any applicant that is a Puget Sound partner, as defined in RCW 90.71.010, along with any project that is referenced in the action agenda developed by the Puget Sound partnership under RCW 90.71.310, shall, except as conditioned by RCW 70.105D.120, receive priority for any available funding for any grant or funding programs or sources that use a competitive bidding process. During the 2007-2009 fiscal biennium, moneys in the account may also be used for grants to local governments to retrofit public sector diesel equipment and for storm water planning and implementation activities.

(c) To expedite cleanups throughout the state, the department shall partner with local communities and liable parties for cleanups. The department is authorized to use the following additional strategies in order to ensure a healthful environment for future generations:

(i) The director may alter grant-matching requirements to create incentives for local governments to expedite cleanups when one of the following conditions exists:

(A) Funding would prevent or mitigate unfair economic hardship imposed by the clean-up liability;

(B) Funding would create new substantial economic development, public recreational, or habitat restoration opportunities that would not otherwise occur; or

(C) Funding would create an opportunity for acquisition and redevelopment of vacant, orphaned, or abandoned property under RCW 70.105D.040(5) that would not otherwise occur;

(ii) The use of outside contracts to conduct necessary studies;

(iii) The purchase of remedial action cost-cap insurance, when necessary to expedite multiparty clean-up efforts.

(4) Except for unanticipated receipts under RCW 43.79.260 through 43.79.282, moneys in the state and local toxics control accounts may be spent only after appropriation by statute.

(5) Except during the 2009-2011 fiscal biennium, one percent of the moneys deposited into the state and local toxics control accounts shall be allocated only for public participation grants to persons who may be adversely affected by a release or threatened release of a hazardous substance and to not-for-profit public interest organizations. The primary purpose of these grants is to facilitate the participation by persons and organizations in the investigation and remedying of releases or threatened releases of hazardous substances and to implement the state's solid and hazardous waste management priorities. No grant may exceed sixty thousand dollars. Grants may be renewed annually. Moneys appropriated for public participation from either account which are not expended at the close of any biennium shall revert to the state toxics control account.

(6) No moneys deposited into either the state or local toxics control account may be used for solid waste incinerator feasibility studies, construction, maintenance, or operation, or, after January 1, 2010, for projects designed to address the restoration of Puget Sound, funded in a competitive grant process, that are in conflict with the action agenda developed by the Puget Sound partnership under RCW 90.71.310.

(7) The department shall adopt rules for grant or loan issuance and performance.

(8) During the 2007-2009 and 2009-2011 fiscal biennia, the legislature may transfer from the local toxics control account to either the state general fund or the oil spill prevention account, or both such amounts as reflect excess fund balance in the account.

(9) During the 2009-2011 fiscal biennium, the local toxics control account may also be used for a standby rescue tug at Neah Bay, local government shoreline update grants, private and public sector diesel equipment retrofit, and oil spill prevention, preparedness, and response activities.

(10) During the 2009-2011 fiscal biennium, the legislature may transfer from the state toxics control account to the state general fund such amounts as reflect the excess fund balance in the account. [2009 c 564 § 951; 2009 c 187 § 5. Prior: 2008 c 329 § 921; 2008 c 329 § 920; 2008 c 329 § 919; 2008 c 328 § 6009; prior: 2007 c 522 § 954; 2007 c 520 § 6033; 2007 c 446 § 2; 2007 c 341 § 30; 2005 c 488 § 926; 2003 1st sp.s. c 25 § 933; 2001 c 27 § 2; 2000 2nd sp.s. c 1 § 912; 1999 c 309 § 923; prior: 1998 c 346 § 905; 1998 c 81 §

2; 1997 c 406 § 5; 1994 c 252 § 5; 1991 sp.s. c 13 § 69; 1989 c 2 § 7 (Initiative Measure No. 97, approved November 8, 1988).]

Reviser's note: This section was amended by 2009 c 187 § 5 and by 2009 c 564 § 951, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2009 c 564: See note following RCW 2.68.020.

Severability—Effective date—2008 c 329: See notes following RCW 28B.105.110.

Part headings not law—Severability—Effective date—2008 c 328: See notes following RCW 43.155.050.

Severability—Effective date—2007 c 522: See notes following RCW 15.64.050.

Part headings not law—Severability—Effective date—2007 c 520: See notes following RCW 43.19.125.

Severability—Effective date—2007 c 341: See RCW 90.71.906 and 90.71.907.

Part headings not law—Severability—Effective dates—2005 c 488: See notes following RCW 28B.50.360.

Severability—Effective date—2003 1st sp.s. c 25: See notes following RCW 19.28.351.

Finding—2001 c 27: "The legislature finds that there is an increasing number of derelict vessels that have been abandoned in the waters along the shorelines of the state. These vessels pose hazards to navigation and threaten the environment with the potential release of hazardous materials. There is no current federal program that comprehensively addresses this problem, and the legislature recognizes that the state must assist in providing a solution to this increasing hazard." [2001 c 27 § 1.]

Severability—Effective date—2000 2nd sp.s. c 1: See notes following RCW 41.05.143.

Severability—Effective date—1999 c 309: See notes following RCW 41.06.152.

Construction—Severability—Effective date—1998 c 346: See notes following RCW 50.24.014.

Local governments—Increased service—1998 c 81: "If this act mandates an increased level of service by local governments, the local government may, under RCW 43.135.060 and chapter 4.92 RCW, submit claims for reimbursement by the legislature. The claims shall be subject to verification by the office of financial management." [1998 c 81 § 3.]

Findings—Intent—1997 c 406: See note following RCW 70.105D.020.

Finding—Effective date—1994 c 252: See notes following RCW 70.119A.020.

Effective dates—Severability—1991 sp.s. c 13: See notes following RCW 18.08.240.

Chapter 70.114A RCW
TEMPORARY WORKER HOUSING—HEALTH AND SAFETY REGULATION

Sections

70.114A.085 Repealed.

70.114A.085 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 70.119 RCW
PUBLIC WATER SUPPLY SYSTEMS—OPERATORS

Sections

70.119.020 Definitions.
70.119.030 Certified operators required for certain public water systems.
70.119.110 Certificates—Grounds for revocation.
70.119.130 Violations—Penalties.
70.119.160 Fee schedules—Certified operators—Public water systems.
70.119.170 Certification of backflow assembly testers and cross-connection control specialists.
70.119.180 Examinations.

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

(1) "Backflow assembly tester" means a person in charge of inspecting, testing, maintaining, and repairing backflow assemblies, devices, and air gaps that protect the public water system.

(2) "Certificate" means a certificate of competency issued by the secretary stating that the operator has met the requirements for the specified operator classification of the certification program.

(3) "Certified operator" means an individual holding a valid certificate and employed or appointed by any county, water-sewer district, municipality, public or private corporation, company, institution, person, federal agency, or the state of Washington and who is designated by the employing or appointing officials as the person responsible for active daily technical operation.

(4) "Cross-connection control specialist" means a person in charge of developing and implementing cross-connection control programs.

(5) "Department" means the department of health.

(6) "Distribution system" means that portion of a public water system which stores, transmits, pumps and distributes water to consumers.

(7) "Groundwater under the direct influence of surface water" means any water beneath the surface of the ground with:

(a) Significant occurrence of insects or other macroorganisms, algae, or large diameter pathogens such as giardia lamblia; or

(b) Significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH which closely correlate to climatological or surface water conditions.

(8) "Group A water system" means a system with fifteen or more service connections, regardless of the number of people; or a system serving an average of twenty-five or more people per day for sixty or more days within a calendar year, regardless of the number of service connections.

(9) "Nationally recognized association of certification authorities" shall mean an organization which serves as an information center for certification activities, recommends minimum standards and guidelines for classification of potable water treatment plants, water distribution systems and waste water facilities and certification of operators, facilitates reciprocity between state programs and assists authorities in establishing new certification programs and updating existing ones.

(10) "Operator" includes backflow assembly tester, certified operator, and cross-connection control specialist as these terms are defined in this section.

(11) "Public water system" means any system, excluding a system serving only one single-family residence and a system with four or fewer connections all of which serve residences on the same farm, providing piped water for human consumption, including any collection, treatment, storage, or

distribution facilities under control of the purveyor and used primarily in connection with the system; and collection or pretreatment storage facilities not under control of the purveyor but primarily used in connection with the system.

(12) "Purification plant" means that portion of a public water system which treats or improves the physical, chemical or bacteriological quality of the system's water to bring the water into compliance with state board of health standards.

(13) "Secretary" means the secretary of the department of health.

(14) "Service" means a connection to a public water system designed to serve a single-family residence, dwelling unit, or equivalent use. If the facility has group home or barracks-type accommodations, three persons will be considered equivalent to one service.

(15) "Surface water" means all water open to the atmosphere and subject to surface runoff. [2009 c 221 § 1; 1999 c 153 § 67; 1995 c 269 § 2904; 1991 c 305 § 2; 1991 c 3 § 369; 1983 c 292 § 2; 1977 ex.s. c 99 § 2.]

Part headings not law—1999 c 153: See note following RCW 57.04.050.

Effective date—1995 c 269: See note following RCW 9.94A.850.

Part headings not law—Severability—1995 c 269: See notes following RCW 13.40.005.

Public water supply systems to comply with water quality standards: RCW 70.142.050.

70.119.030 Certified operators required for certain public water systems. (1) A public water system shall have a certified operator if:

(a) It is a group A water system; or

(b) It is a public water system using a surface water source or a groundwater source under the direct influence of surface water.

(2) The certified operators shall be in charge of the technical direction of a water system's operation, or an operating shift of such a system, or a major segment of a system necessary for monitoring or improving the quality of water. The operator shall be certified as provided in RCW 70.119.050.

(3) A certified operator may provide required services to more than one system or to a group of systems. The amount of time that a certified operator shall be required to be present at any given system shall be based upon the time required to properly operate and maintain the public water system as designed and constructed in accordance with RCW 43.20.050. The employing or appointing officials shall designate the position or positions requiring mandatory certification within their individual systems and shall assure that such certified operators are responsible for the system's technical operation.

(4) The department shall, in establishing by rule or otherwise the requirements for public water systems with fewer than one hundred connections, phase in such requirements in order to assure that (a) an adequate number of certified operators are available to serve the additional systems, (b) the systems have adequate notice and time to plan for securing the services of a certified operator, (c) the department has the additional data and other administrative capacity, (d) adequate training is available to certify additional operators as necessary, and (e) any additional requirements under federal law are satisfied. The department shall require certified operators for all group A systems as necessary to conform to federal law or implementing rules or guidelines. Unless necessary to conform to federal law, rules, or guidelines, the department shall not require a certified operator for a system with fewer than one hundred connections unless that system is determined by the department to be in significant noncompliance with operational, monitoring, or water quality standards that would put the public health at risk, as defined by the department by rule, or has, or is required to have, water treatment facilities other than simple disinfection. [2009 c 221 § 2; 1997 c 218 § 2; 1995 c 376 § 6; 1991 c 305 § 3; 1983 c 292 § 3; 1977 ex.s. c 99 § 3.]

Findings—1997 c 218: "The legislature finds and declares that:

(1) The provision of safe and reliable water supplies to the people of the state of Washington is fundamental to ensuring public health and continuing economic vitality of this state.

(2) The department of health, pursuant to legislative directive in 1995, has provided a report that incorporates the findings and recommendations of the water supply advisory committee as to progress in meeting the objectives of the public health improvement plan, changes warranted by the recent congressional action reauthorizing the federal safe drinking water act, and new approaches to providing services under the general principles of regulatory reform.

(3) The environmental protection agency has recently completed a national assessment of public water system capital needs, which has identified over four billion dollars in such needs in the state of Washington.

(4) The changes to the safe drinking water act offer the opportunity for the increased ability of the state to tailor federal requirements and programs to meet the conditions and objectives within this state.

(5) The department of health and local governments should be provided with adequate authority, flexibility, and resources to be able to implement the principles and recommendations adopted by the water supply advisory committee.

(6) Statutory changes are necessary to eliminate ambiguity or conflicting authorities, provide additional information and tools to consumers and the public, and make necessary changes to be consistent with federal law.

(7) A basic element to the protection of the public's health from waterborne disease outbreaks is systematic and comprehensive monitoring of water supplies for all contaminants, including hazardous substances with long-term health effects, and routine field visits to water systems for technical assistance and evaluation.

(8) The water systems of this state should have prompt and full access to the newly created federal state revolving fund program to help meet their financial needs and to achieve and maintain the technical, managerial, and financial capacity necessary for long-term compliance with state and federal regulations. This requires authority for streamlined program administration and the provision of the necessary state funds required to match the available federal funds.

(9) Stable, predictable, and adequate funding is essential to a statewide drinking water program that meets state public health objectives and provides the necessary state resources to utilize the new flexibility, opportunities, and programs under the safe drinking water act." [1997 c 218 § 1.]

Effective date—1997 c 218: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 25, 1997]." [1997 c 218 § 6.]

Findings—1995 c 376: See note following RCW 70.116.060.

70.119.110 Certificates—Grounds for revocation. The secretary may revoke or suspend a certificate: (1) Found to have been obtained by fraud or deceit; (2) for fraud, deceit, or gross negligence involving the operation or maintenance of a public water system; (3) for fraud, deceit, or gross negligence in inspecting, testing, maintenance, or repair of backflow assemblies, devices, or air gaps intended to protect a public water system from contamination; or (4) for an intentional violation of the requirements of this chapter or any lawful rules, order, or regulation of the department. No person whose certificate is revoked under this section shall be

eligible to apply for a certificate until the completion of the revocation period. [2009 c 221 § 5; 1995 c 269 § 2906; 1991 c 305 § 7; 1983 c 292 § 9; 1977 ex.s. c 99 § 11.]

Effective date—1995 c 269: See note following RCW 9.94A.850.

Part headings not law—Severability—1995 c 269: See notes following RCW 13.40.005.

70.119.130 Violations—Penalties. Any person, including any operator or any firm, association, corporation, municipal corporation, or other governmental subdivision or agency who, after thirty days' written notice, operates a public water system which is not in compliance with RCW 70.119.030(1), shall be guilty of a misdemeanor. Each month of such operation out of compliance with RCW 70.119.030(1) shall constitute a separate offense. Upon conviction, violators shall be fined an amount not exceeding one hundred dollars for each offense. It shall be the duty of the prosecuting attorney or the attorney general, as appropriate, to secure injunctions of continuing violations of any provisions of this chapter or the rules and regulations adopted under this chapter. [2009 c 221 § 6; 1991 c 305 § 8; 1983 c 292 § 10; 1977 ex.s. c 99 § 13.]

Effective date—1977 ex.s. c 99: See RCW 70.119.900.

70.119.160 Fee schedules—Certified operators—Public water systems. The department of health certifies public water system operators and monitors public water systems to ensure that such systems comply with the requirements of this chapter and rules implementing this chapter. The secretary shall establish a schedule of fees for operator applicants and renewal licenses and a separate schedule of fees for public water systems to support the waterworks operator certification program. The fees shall be set at a level sufficient for the department to recover the costs of the waterworks operator certification program and in accordance with the procedures established under RCW 43.70.250. [2009 c 221 § 7; 1993 c 306 § 4.]

70.119.170 Certification of backflow assembly testers and cross-connection control specialists. (1) Backflow assembly testers and cross-connection control specialists must hold a valid certificate and must be certified as provided by rule as adopted under the authority of RCW 70.119.050.

(2) Backflow assembly testers who maintain or repair backflow assemblies, devices, or air gaps inside a building are subject to certification under chapter 18.106 RCW. [2009 c 221 § 3.]

70.119.180 Examinations. (1) Any examination required by the department as a prerequisite for the issuance of certificate under this chapter must be offered in both eastern and western Washington.

(2) Operators not required to be certified by this chapter are encouraged to become certified on a voluntary basis. [2009 c 221 § 4.]

Chapter 70.119A RCW

PUBLIC WATER SYSTEMS—PENALTIES AND COMPLIANCE

Sections

70.119A.020 Definitions.
70.119A.050 Enforcement of regulations by local boards of health—Civil penalties.
70.119A.060 Public water systems—Mandate—Conditions for approval or creation of new public water system—Department and local health jurisdiction duties.
70.119A.130 Local government authority.
70.119A.200 Measuring chlorine residuals.

70.119A.020 Definitions. Unless the context clearly requires otherwise, the following definitions apply throughout this chapter:

(1) "Area-wide waivers" means a waiver granted by the department as a result of a geographically based testing program meeting required provisions of the federal safe drinking water act.

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

(3) "Federal safe drinking water act" means the federal safe drinking water act, 42 U.S.C. Sec. 300f et seq., as now in effect or hereafter amended.

(4) "Group A public water system" means a public water system with fifteen or more service connections, regardless of the number of people; or a system serving an average of twenty-five or more people per day for sixty or more days within a calendar year, regardless of the number of service connections; or a system serving one thousand or more people for two or more consecutive days.

(5) "Group B public water system" means a public water system that does not meet the definition of a group A public water system.

(6) "Local board of health" means the city, town, county, or district board of health.

(7) "Local health jurisdiction" means an entity created under chapter 70.05, 70.08, or 70.46 RCW which provides public health services to persons within the area.

(8) "Local health officer" means the legally qualified physician who has been appointed as the health officer for the city, town, county, or district public health department.

(9) "Order" means a written direction to comply with a provision of the regulations adopted under RCW 43.20.050(2) (a) and (b) or 70.119.050 or to take an action or a series of actions to comply with the regulations.

(10) "Person" includes, but is not limited to, natural persons, municipal corporations, governmental agencies, firms, companies, mutual or cooperative associations, institutions, and partnerships. It also means the authorized agents of any such entities.

(11) "Public health emergency" means a declaration by an authorized health official of a situation in which either illness, or exposure known to cause illness, is occurring or is imminent.

(12) "Public water system" means any system, excluding a system serving only one single-family residence and a system with four or fewer connections all of which serve residences on the same farm, providing water for human consumption through pipes or other constructed conveyances, including any collection, treatment, storage, or distribution facilities under control of the purveyor and used primarily in

connection with the system; and collection or pretreatment storage facilities not under control of the purveyor but primarily used in connection with the system, including:

(a) Any collection, treatment, storage, and distribution facilities under control of the purveyor and used primarily in connection with such system; and

(b) Any collection or pretreatment storage facilities not under control of the purveyor which are primarily used in connection with such system.

(13) "Purveyor" means any agency or subdivision of the state or any municipal corporation, firm, company, mutual or cooperative association, institution, partnership, or person or any other entity, that owns or operates a public water system. It also means the authorized agents of any such entities.

(14) "Regulations" means rules adopted to carry out the purposes of this chapter.

(15) "Secretary" means the secretary of the department of health.

(16) "State board of health" is the board created by RCW 43.20.030. [2009 c 495 § 3; 1999 c 118 § 2; 1994 c 252 § 2; 1991 c 304 § 2; 1991 c 3 § 370; 1989 c 422 § 2; 1986 c 271 § 2.]

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

Effective date—2009 c 495: See note following RCW 43.20.050.

Finding—Intent—1999 c 118: "The legislature finds and declares that the provision of safe and reliable water supplies is essential to public health and the continued economic vitality of the state of Washington. Maintaining the authority necessary to ensure safe and reliable water supplies requires that state laws conform with the provisions of the federal safe drinking water act. It is the intent of the legislature that the definition of public water system be amended to reflect recent amendments to the federal safe drinking water act." [1999 c 118 § 1.]

Finding—1994 c 252: "The legislature finds that:

(1) The federal safe drinking water act has imposed significant new costs on public water systems and that the state should seek maximum regulatory flexibility allowed under federal law;

(2) There is a need to comprehensively assess and characterize the groundwaters of the state to evaluate public health risks from organic and inorganic chemicals regulated under federal law;

(3) That federal law provides a mechanism to significantly reduce testing and monitoring costs to public water systems through the use of area-wide waivers.

The legislature therefore directs the department of health to conduct a voluntary program to selectively test the groundwaters of the state for organic and inorganic chemicals regulated under federal law for the purpose of granting area-wide waivers." [1994 c 252 § 1.]

Effective date—1994 c 252: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 1, 1994]." [1994 c 252 § 6.]

Requirements effective upon adoption of rules—1991 c 304: See note following RCW 70.119A.100.

70.119A.050 Enforcement of regulations by local boards of health—Civil penalties. Each local board of health that is enforcing the regulations regarding public water systems is authorized to impose and collect civil penalties for violations within the area of its responsibility under the same limitations and requirements imposed upon the department by RCW 70.119A.030 and 70.119A.040, except that judgment shall be entered in the name of the local board and penalties shall be placed into the general fund of the county, city, or town operating the local board of health. [2009 c 495 § 4; 1993 c 305 § 3; 1989 c 422 § 8; 1986 c 271 § 5.]

Effective date—2009 c 495: See note following RCW 43.20.050.

70.119A.060 Public water systems—Mandate—Conditions for approval or creation of new public water system—Department and local health jurisdiction duties. (1) To assure safe and reliable public drinking water and to protect the public health:

(a) Public water systems shall comply with all applicable federal, state, and local rules; and

(b) Group A public water systems shall:

(i) Protect the water sources used for drinking water;

(ii) Provide treatment adequate to assure that the public health is protected;

(iii) Provide and effectively operate and maintain public water system facilities;

(iv) Plan for future growth and assure the availability of safe and reliable drinking water;

(v) Provide the department with the current names, addresses, and telephone numbers of the owners, operators, and emergency contact persons for the system, including any changes to this information, and provide to users the name and twenty-four hour telephone number of an emergency contact person; and

(vi) Take whatever investigative or corrective action is necessary to assure that a safe and reliable drinking water supply is continuously available to users.

(2) No new public water system may be approved or created unless: (a) It is owned or operated by a satellite system management agency established under RCW 70.116.134 and the satellite system management system complies with financial viability requirements of the department; or (b) a satellite management system is not available and it is determined that the new system has sufficient management and financial resources to provide safe and reliable service. The approval of any new system that is not owned by a satellite system management agency shall be conditioned upon future management or ownership by a satellite system management agency, if such management or ownership can be made with reasonable economy and efficiency, or upon periodic review of the system's operational history to determine its ability to meet the department's financial viability and other operating requirements. The department and local health jurisdictions shall enforce this requirement under authority provided under this chapter, chapter 70.116, or 70.05 RCW, or other authority governing the approval of new water systems by the department or a local jurisdiction.

(3) The department and local health jurisdictions shall carry out the rules and regulations of the state board of health adopted pursuant to RCW 43.20.050(2) (a) and (b) and other rules adopted by the department relating to public water systems. [2009 c 495 § 5; 1995 c 376 § 3; 1991 c 304 § 4; 1990 c 132 § 4; 1989 c 422 § 3.]

Effective date—2009 c 495: See note following RCW 43.20.050.

Findings—1995 c 376: See note following RCW 70.116.060.

Requirements effective upon adoption of rules—1991 c 304: See note following RCW 70.119A.100.

Legislative findings—Severability—1990 c 132: See notes following RCW 43.20.240.

70.119A.130 Local government authority. (1) Local governments may establish separate operating permit

requirements for public water systems provided the operating permit requirements have been approved by the department. The department shall not approve local operating permit requirements unless the local system will result in an increased level of service to the public water system. There shall not be duplicate operating permit requirements imposed by local governments and the department.

(2) Local governments may establish requirements for group B public water systems in addition to those established by rule by the state board of health pursuant to RCW 43.20.050(2) or other rules adopted by the department, provided that the requirements are at least as stringent as the state requirements. [2009 c 495 § 6; 1995 c 376 § 9; 1991 c 304 § 7.]

Effective date—2009 c 495: See note following RCW 43.20.050.

Effective date—1995 c 376 § 9: "Section 9 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 c 376 § 17.]

Findings—1995 c 376: See note following RCW 70.116.060.

Requirements effective upon adoption of rules—1991 c 304: See note following RCW 70.119A.100.

70.119A.200 Measuring chlorine residuals. A group A water system serving fewer than one hundred connections that purchases water from a water system approved by the department shall measure chlorine residuals at the same time and location of collection for a routine and repeat coliform sample. [2009 c 367 § 8.]

Chapter 70.122 RCW
NATURAL DEATH ACT

Sections

70.122.100 Mercy killing, lethal injection, or active euthanasia not authorized.
70.122.925 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. *(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*

70.122.100 Mercy killing, lethal injection, or active euthanasia not authorized. Nothing in this chapter shall be construed to condone, authorize, or approve mercy killing, lethal injection, or active euthanasia. [2009 c 1 § 25 (Initiative Measure No. 1000, approved November 4, 2008); 1992 c 98 § 10; 1979 c 112 § 11.]

Short title—Severability—Effective dates—Captions, part headings, and subpart headings not law—2009 c 1 (Initiative Measure No. 1000): See RCW 70.245.901 through 70.245.904.

70.122.925 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. ***(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 154.]

Chapter 70.125 RCW
VICTIMS OF SEXUAL ASSAULT ACT

Sections

70.125.030 Definitions.

70.125.030 Definitions. As used in this chapter and unless the context indicates otherwise:

(1) "Community sexual assault program" means a community-based social service agency that is qualified to provide and provides core services to victims of sexual assault.

(2) "Core services" means treatment services for victims of sexual assault including information and referral, crisis intervention, medical advocacy, legal advocacy, support, system coordination, and prevention for potential victims of sexual assault.

(3) "Department" means the department of commerce.

(4) "Law enforcement agencies" means police and sheriff's departments of this state.

(5) "Personal representative" means a friend, relative, attorney, or employee or volunteer from a community sexual assault program or specialized treatment service provider.

(6) "Rape crisis center" means a community-based social service agency which provides services to victims of sexual assault.

(7) "Sexual assault" means one or more of the following:

(a) Rape or rape of a child;

(b) Assault with intent to commit rape or rape of a child;

(c) Incest or indecent liberties;

(d) Child molestation;

(e) Sexual misconduct with a minor;

(f) Custodial sexual misconduct;

(g) Crimes with a sexual motivation; or

(h) An attempt to commit any of the aforementioned offenses.

(8) "Specialized services" means treatment services for victims of sexual assault including support groups, therapy, and specialized sexual assault medical examination.

(9) "Victim" means any person who suffers physical and/or mental anguish as a proximate result of a sexual assault. [2009 c 565 § 50; 2000 c 54 § 1; 1999 c 45 § 6; 1996 c 123 § 6; 1988 c 145 § 19; 1979 ex.s. c 219 § 3.]

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

Transfer of powers and duties—1996 c 123: "The powers and duties of the department of social and health services under this chapter shall be transferred to the department of community, trade, and economic development on July 1, 1996. The department of social and health services shall transfer all unspent appropriated funds, records, and documents necessary to facilitate a successful transfer." [1996 c 123 § 9.]

Effective date—1996 c 123: See note following RCW 43.280.010.

Effective date—Savings—Application—1988 c 145: See notes following RCW 9A.44.010.

Severability—1979 ex.s. c 219: See note following RCW 70.125.010.

Chapter 70.128 RCW
ADULT FAMILY HOMES

Sections

70.128.005 Findings—Intent.
70.128.040 Adoption of rules and standards—Negotiated rule making—Specialty license.
70.128.060 License—Generally—Fees.
70.128.163 Temporary management program—Purposes—Voluntary participation—Temporary management duties, duration—Rules.
70.128.225 Repealed.
70.128.260 Limitation on restrictive covenants.
70.128.901 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. *(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*

70.128.005 Findings—Intent. (1) The legislature finds that:

(a) Adult family homes are an important part of the state's long-term care system. Adult family homes provide an alternative to institutional care and promote a high degree of independent living for residents.

(b) Persons with functional limitations have broadly varying service needs. Adult family homes that can meet those needs are an essential component of a long-term system. Different populations living in adult family homes, such as persons with developmental disabilities and elderly persons, often have significantly different needs and capacities from one another.

(c) There is a need to update certain restrictive covenants to take into consideration the legislative findings cited in (a) and (b) of this subsection; the need to prevent or reduce institutionalization; and the legislative and judicial mandates to provide care and services in the least restrictive setting appropriate to the needs of the individual. Restrictive covenants which directly or indirectly restrict or prohibit the use of property for adult family homes (i) are contrary to the public interest served by establishing adult family homes and (ii) discriminate against individuals with disabilities in violation of RCW 49.60.224.

(2) It is the legislature's intent that department rules and policies relating to the licensing and operation of adult family homes recognize and accommodate the different needs and capacities of the various populations served by the homes. Furthermore, the development and operation of adult family homes that can provide quality personal care and special care services should be encouraged.

(3) The legislature finds that many residents of community-based long-term care facilities are vulnerable and their health and well-being are dependent on their caregivers. The quality, skills, and knowledge of their caregivers are the key to good care. The legislature finds that the need for well-trained caregivers is growing as the state's population ages and residents' needs increase. The legislature intends that current training standards be enhanced.

(4) The legislature finds that the state of Washington has a compelling interest in protecting and promoting the health, welfare, and safety of vulnerable adults residing in adult family homes. The health, safety, and well-being of vulnerable adults must be the paramount concern in determining whether to issue a license to an applicant, whether to suspend or revoke a license, or whether to take other licensing actions. [2009 c 530 § 2; 2001 c 319 § 1; 2000 c 121 § 4; 1995 c 260 § 1; 1989 c 427 § 14.]

70.128.040 Adoption of rules and standards—Negotiated rule making—Specialty license. (1) The department shall adopt rules and standards with respect to adult family homes and the operators thereof to be licensed under this chapter to carry out the purposes and requirements of this chapter. The rules and standards relating to applicants and operators shall address the differences between individual providers and providers that are partnerships, corporations, associations, or companies. The rules and standards shall also recognize and be appropriate to the different needs and capacities of the various populations served by adult family homes such as but not limited to persons who are developmentally disabled or elderly. In developing rules and standards the department shall recognize the residential family-like nature of adult family homes and not develop rules and standards which by their complexity serve as an overly restrictive barrier to the development of the adult family homes in the state. Procedures and forms established by the department shall be developed so they are easy to understand and comply with. Paper work requirements shall be minimal. Easy to understand materials shall be developed for applicants and providers explaining licensure requirements and procedures.

(2)(a) In developing the rules and standards, the department shall consult with all divisions and administrations within the department serving the various populations living in adult family homes, including the division of developmental disabilities and the aging and adult services administration. Involvement by the divisions and administration shall be for the purposes of assisting the department to develop rules and standards appropriate to the different needs and capacities of the various populations served by adult family homes. During the initial stages of development of proposed rules, the department shall provide notice of development of the rules to organizations representing adult family homes and their residents, and other groups that the department finds appropriate. The notice shall state the subject of the rules under consideration and solicit written recommendations regarding their form and content.

(b) In addition, the department shall engage in negotiated rule making pursuant to RCW 34.05.310(2)(a) with the exclusive representative of the adult family home licensees selected in accordance with RCW 70.128.043 and with other affected interests before adopting requirements that affect adult family home licensees.

(3) Except where provided otherwise, chapter 34.05 RCW shall govern all department rule-making and adjudicative activities under this chapter.

(4) The department shall establish a specialty license to include geriatric specialty certification for providers who have successfully completed the University of Washington school of nursing certified geriatric certification program and testing. [2009 c 530 § 1; 2007 c 184 § 8; 1995 c 260 § 3; 1989 c 427 § 18.]

Part headings not law—Severability—Conflict with federal requirements—2007 c 184: See notes following RCW 41.56.029.

70.128.060 License—Generally—Fees. (1) An application for license shall be made to the department upon forms provided by it and shall contain such information as the department reasonably requires.

(2) Subject to the provisions of this section, the department shall issue a license to an adult family home if the department finds that the applicant and the home are in compliance with this chapter and the rules adopted under this chapter, unless (a) the applicant or a person affiliated with the applicant has prior violations of this chapter relating to the adult family home subject to the application or any other adult family home, or of any other law regulating residential care facilities within the past five years that resulted in revocation, suspension, or nonrenewal of a license or contract with the department; or (b) the applicant or a person affiliated with the applicant has a history of significant noncompliance with federal, state, or local laws, rules, or regulations relating to the provision of care or services to vulnerable adults or to children. A person is considered affiliated with an applicant if the person is listed on the license application as a partner, officer, director, resident manager, or majority owner of the applying entity, or is the spouse of the applicant.

(3) The license fee shall be submitted with the application.

(4) The department shall serve upon the applicant a copy of the decision granting or denying an application for a license. An applicant shall have the right to contest denial of his or her application for a license as provided in chapter 34.05 RCW by requesting a hearing in writing within twenty-eight days after receipt of the notice of denial.

(5) The department shall not issue a license to a provider if the department finds that the provider or spouse of the provider or any partner, officer, director, managerial employee, or majority owner has a history of significant noncompliance with federal or state regulations, rules, or laws in providing care or services to vulnerable adults or to children.

(6) The department shall license an adult family home for the maximum level of care that the adult family home may provide. The department shall define, in rule, license levels based upon the education, training, and caregiving experience of the licensed provider or staff.

(7) The department shall establish, by rule, standards used to license nonresident providers and multiple facility operators.

(8) The department shall establish, by rule, for multiple facility operators educational standards substantially equivalent to recognized national certification standards for residential care administrators.

(9) The license fee shall be set at one hundred dollars per year for each home. An eight hundred dollar processing fee shall also be charged each home when the home is initially licensed. The processing fee will be applied toward the license renewal in the subsequent three years. A five hundred dollar rebate will be returned to any home that renews after four years in operation.

(10) A provider who receives notification of the department's initiation of a denial, suspension, nonrenewal, or revocation of an adult family home license may, in lieu of appealing the department's action, surrender or relinquish the license. The department shall not issue a new license to or contract with the provider, for the purposes of providing care to vulnerable adults or children, for a period of twenty years following the surrendering or relinquishment of the former license. The licensing record shall indicate that the provider relinquished or surrendered the license, without admitting the violations, after receiving notice of the department's initiation of a denial, suspension, nonrenewal, or revocation of a license.

(11) The department shall establish, by rule, the circumstances requiring a change in the licensed provider, which include, but are not limited to, a change in ownership or control of the adult family home or provider, a change in the provider's form of legal organization, such as from sole proprietorship to partnership or corporation, and a dissolution or merger of the licensed entity with another legal organization. The new provider is subject to the provisions of this chapter, the rules adopted under this chapter, and other applicable law. In order to ensure that the safety of residents is not compromised by a change in provider, the new provider is responsible for correction of all violations that may exist at the time of the new license. [2009 c 530 § 5; 2004 c 140 § 3; 2001 c 193 § 9; 1995 c 260 § 4; 1989 c 427 § 20.]

70.128.163 Temporary management program—Purposes—Voluntary participation—Temporary management duties, duration—Rules. (1) When the department has summarily suspended a license, the licensee may, subject to the department's approval, elect to participate in a temporary management program. All provisions of this section shall apply.

The purposes of a temporary management program are as follows:

(a) To mitigate dislocation and transfer trauma of residents while the department and licensee may pursue dispute resolution or appeal of a summary suspension of license;

(b) To facilitate the continuity of safe and appropriate resident care and services;

(c) To preserve a residential option that meets a specialized service need and/or is in a geographical area that has a lack of available providers; and

(d) To provide residents with the opportunity for orderly discharge.

(2) Licensee participation in the temporary management program is voluntary. The department shall have the discretion to approve any temporary manager and the temporary management arrangements. The temporary management shall assume the total responsibility for the daily operations of the home.

(3) The temporary management shall contract with the licensee as an independent contractor and is responsible for ensuring that all minimum licensing requirements are met. The temporary management shall protect the health, safety, and well-being of the residents for the duration of the temporary management and shall perform all acts reasonably necessary to ensure that residents' needs are met. The licensee is responsible for all costs related to administering the temporary management program and contracting with the temporary management. The temporary management agreement shall at a minimum address the following:

(a) Provision of liability insurance to protect residents and their property;

(b) Preservation of resident trust funds;

(c) The timely payment of past due or current accounts, operating expenses, including but not limited to staff compensation, and all debt that comes due during the period of the temporary management;

(d) The responsibilities for addressing all other financial obligations that would interfere with the ability of the temporary manager to provide adequate care and services to residents; and

(e) The authority of the temporary manager to manage the home, including the hiring, managing, and firing of employees for good cause, and to provide adequate care and services to residents.

(4) The licensee and department shall provide written notification immediately to all residents, legal representatives, interested family members, and the state long-term care ombudsman program, of the temporary management and the reasons for it. This notification shall include notice that residents may move from the home without notifying the licensee in advance, and without incurring any charges, fees, or costs otherwise available for insufficient advance notice, during the temporary management period.

(5) The temporary management period under this section concludes twenty-eight days after issuance of the formal notification of enforcement action or conclusion of administrative proceedings, whichever date is later. Nothing in this section precludes the department from revoking its approval of the temporary management and/or exercising its licensing enforcement authority under this chapter. The department's decision whether to approve or to revoke a temporary management arrangement is not subject to the administrative procedure act, chapter 34.05 RCW.

(6) The department is authorized to adopt rules implementing this section. In implementing this section, the department shall consult with consumers, advocates, and organizations representing adult family homes. The department may recruit and approve qualified, licensed providers interested in serving as temporary managers. [2009 c 560 § 6; 2001 c 193 § 6.]

Intent—Effective date—Disposition of property and funds—Assignment/delegation of contractual rights or duties—2009 c 560: See notes following RCW 18.06.080.

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

70.128.260 Limitation on restrictive covenants. (1) To effectuate the public policies of this chapter, restrictive covenants may not limit, directly or indirectly:

(a) Persons with disabilities from living in an adult family home licensed under this chapter; or

(b) Persons and legal entities from operating adult family homes licensed under this chapter, whether for-profit or nonprofit, to provide services covered under this chapter. However, this subsection does not prohibit application of reasonable nondiscriminatory regulation, including but not limited to landscaping standards or regulation of sign location or size, that applies to all residential property subject to the restrictive covenant.

(2) This section applies retroactively to all restrictive covenants in effect on July 26, 2009. Any provision in a restrictive covenant in effect on or after July 26, 2009, that is inconsistent with subsection (1) of this section is unenforceable to the extent of the conflict. [2009 c 530 § 3.]

70.128.901 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. ***(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 155.]

Chapter 70.129 RCW

LONG-TERM CARE RESIDENT RIGHTS

Sections

70.129.180 Facility's policy on accepting medicaid as a payment source—Disclosure.

70.129.180 Facility's policy on accepting medicaid as a payment source—Disclosure. (1) A long-term care facility must fully disclose to residents the facility's policy on accepting medicaid as a payment source. The policy shall clearly state the circumstances under which the facility provides care for medicaid eligible residents and for residents who may later become eligible for medicaid.

(2) The policy under this section must be provided to residents orally and in writing prior to admission, in a language that the resident or the resident's representative understands. The written policy must be in type font no smaller than fourteen point and written on a page that is separate from other documents. The policy must be signed and dated by the resident or the resident's representative, if the resident lacks capacity. The facility must retain a copy of the disclosure. Current residents must receive a copy of the policy consistent with this section by July 26, 2009. [2009 c 489 § 1.]

Chapter 70.146 RCW

WATER POLLUTION CONTROL FACILITIES FINANCING

Sections

70.146.010 Purpose—Legislative intent.
70.146.020 Definitions.
70.146.030 Water pollution control facilities and activities—Grants or loans.
70.146.040 Level of grant or loan not precedent.
70.146.060 Use of funds—Limitations.
70.146.075 Extended grant payments.
70.146.080 Repealed.

70.146.010 Purpose—Legislative intent. The long-range health and environmental goals for the state of Washington require the protection of the state's surface and underground waters for the health, safety, use, enjoyment, and economic benefit of its people. It is the purpose of this chapter to provide financial assistance to the state and to local governments for the planning, design, acquisition, construction, and improvement of water pollution control facilities and related activities in the achievement of state and federal water pollution control requirements for the protection of the state's waters.

It is the intent of the legislature that distribution of moneys for water pollution control facilities under this chapter be made on an equitable basis taking into consideration legal mandates, local effort, ratepayer impacts, and past distributions of state and federal moneys for water pollution control facilities.

It is the intent of this chapter that the cost of any water pollution control facility attributable to increased or additional capacity that exceeds one hundred ten percent of existing needs at the time of application for assistance under this chapter shall be entirely a local or private responsibility. It is the intent of this chapter that industrial pretreatment be paid by industries and that state funds shall not be used for such purposes. [2009 c 479 § 51; 1986 c 3 § 1.]

Effective date—2009 c 479: See note following RCW 2.56.030.

Effective dates—1986 c 3: See note following RCW 82.24.027.

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

(1) "Department" means the department of ecology.

(2) "Eligible cost" means the cost of that portion of a water pollution control facility that can be financed under this chapter excluding any portion of a facility's cost attributable to capacity that is in excess of that reasonably required to address one hundred ten percent of the applicant's needs for water pollution control existing at the time application is submitted for assistance under this chapter.

(3) "Nonpoint source water pollution" means pollution that enters any waters of the state from any dispersed water-based or land-use activities, including, but not limited to, atmospheric deposition, surface water runoff from agricultural lands, urban areas, and forest lands, subsurface or underground sources, and discharges from boats or other marine vessels.

(4) "Public body" means the state of Washington or any agency, county, city or town, conservation district, other political subdivision, municipal corporation, quasi-municipal corporation, and those Indian tribes now or hereafter recognized as such by the federal government.

(5) "Sole source aquifer" means the sole or principal source of public drinking water for an area designated by the administrator of the environmental protection agency pursuant to Public Law 93-523, Sec. 1424(b).

(6) "Water pollution" means such contamination, or other alteration of the physical, chemical, or biological properties of any waters of the state, including change in temperature, taste, color, turbidity, or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive, or other substance into any waters of the state as will or is likely to create a nuisance or render such waters harmful, detrimental, or injurious to the public health, safety, or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish, or other aquatic life.

(7) "Water pollution control activities" means actions taken by a public body for the following purposes: (a) To prevent or mitigate pollution of underground water; (b) to control nonpoint sources of water pollution; (c) to restore the water quality of fresh water lakes; and (d) to maintain or improve water quality through the use of water pollution control facilities or other means. During the 1995-1997 fiscal biennium, "water pollution control activities" includes activities by state agencies to protect public drinking water supplies and sources.

(8) "Water pollution control facility" or "facilities" means any facilities or systems for the control, collection, storage, treatment, disposal, or recycling of wastewater, including but not limited to sanitary sewage, storm water, residential, commercial, industrial, and agricultural wastes, which are causing water quality degradation due to concentrations of conventional, nonconventional, or toxic pollutants. Water pollution control facilities include all equipment, utilities, structures, real property, and interests in and improvements on real property necessary for or incidental to such purpose. Water pollution control facilities also include such facilities, equipment, and collection systems as are necessary to protect federally designated sole source aquifers. [2009 c 479 § 52; 1995 2nd sp.s. c 18 § 920; 1993 sp.s. c 24 § 923; 1987 c 436 § 5; 1986 c 3 § 2.]

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

Effective date—2009 c 479: See note following RCW 2.56.030.

Severability—Effective date—1995 2nd sp.s. c 18: See notes following RCW 19.118.110.

Severability—Effective dates—1993 sp.s. c 24: See notes following RCW 28A.310.020.

Effective dates—1986 c 3: See note following RCW 82.24.027.

70.146.030 Water pollution control facilities and activities—Grants or loans. The department may make grants or loans to public bodies, including grants to public bodies as cost-sharing moneys in any case where federal, local, or other funds are made available on a cost-sharing basis, for water pollution control facilities and activities, or for purposes of assisting a public body to obtain an ownership interest in water pollution control facilities and/or to defray a part of the payments made by a public body to a service provider under a service agreement entered into pursuant to RCW 70.150.060, within the purposes of this chapter and for related administrative expenses. No more than three percent of the moneys may be used by the department to pay for the administration of the grant and loan program authorized by this chapter. [2009 c 479 § 53; 2007 c 522 § 955. Prior: 2005 c 518 § 940; 2005 c 514 § 1108; 2004 c 277 § 909; 2003 1st sp.s. c 25 § 934; 2002 c 371 § 921; 2001 2nd sp.s. c 7 § 922; 1996 c 37 § 2; 1995 2nd sp.s. c 18 § 921; 1991 sp.s. c 13 § 61; prior: 1987 c 505 § 64; 1987 c 436 § 6; 1986 c 3 § 3.]

Effective date—2009 c 479: See note following RCW 2.56.030.

Severability—Effective date—2007 c 522: See notes following RCW 15.64.050.

Severability—Effective date—2005 c 518: See notes following RCW 28A.500.030.

Effective date—2005 c 514: See note following RCW 83.100.230.

Part headings not law—Severability—2005 c 514: See notes following RCW 82.12.808.

Severability—Effective dates—2004 c 277: See notes following RCW 89.08.550.

Severability—Effective date—2003 1st sp.s. c 25: See notes following RCW 19.28.351.

Severability—Effective date—2002 c 371: See notes following RCW 9.46.100.

Severability—Effective date—2001 2nd sp.s. c 7: See notes following RCW 43.320.110.

Severability—Effective date—1995 2nd sp.s. c 18: See notes following RCW 19.118.110.

Effective dates—Severability—1991 sp.s. c 13: See notes following RCW 18.08.240.

Effective dates—1986 c 3: See note following RCW 82.24.027.

70.146.040 Level of grant or loan not precedent. No grant or loan made in this chapter for fiscal year 1987 shall be construed to establish a precedent for levels of grants or loans made under this chapter thereafter. [2009 c 479 § 54; 1986 c 3 § 6.]

Effective date—2009 c 479: See note following RCW 2.56.030.

Effective dates—1986 c 3: See note following RCW 82.24.027.

70.146.060 Use of funds—Limitations. Funds provided for facilities and activities under this chapter may be used for payments to a service provider under a service agreement pursuant to RCW 70.150.060. If funds are to be used for such payments, the department may make periodic disbursements to a public body or may make a single lump sum disbursement. Disbursements of funds with respect to a facility owned or operated by a service provider shall be equivalent in value to disbursements that would otherwise be made if that facility were owned or operated by a public body. Payments under this chapter for waste disposal and management facilities made to public bodies entering into service agreements pursuant to RCW 70.150.060 shall not exceed amounts paid to public bodies not entering into service agreements. [2009 c 479 § 55. Prior: 1987 c 527 § 1; 1987 c 436 § 7; 1986 c 3 § 9.]

Effective date—2009 c 479: See note following RCW 2.56.030.

Effective dates—1986 c 3: See note following RCW 82.24.027.

70.146.075 Extended grant payments. (1) The department of ecology may enter into contracts with local jurisdictions which provide for extended grant payments under which eligible costs may be paid on an advanced or deferred basis.

(2) Extended grant payments shall be in equal annual payments, the total of which does not exceed, on a net present value basis, fifty percent of the total eligible cost of the project incurred at the time of design and construction. The duration of such extended grant payments shall be for a period not to exceed twenty years. The total of federal and state grant moneys received for the eligible costs of the project shall not exceed fifty percent of the eligible costs.

(3) Any moneys appropriated by the legislature for the purposes of this section shall be first used by the department of ecology to satisfy the conditions of the extended grant payment contracts. [2009 c 479 § 56; 1987 c 516 § 1.]

Effective date—2009 c 479: See note following RCW 2.56.030.

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

Chapter 70.149 RCW
HEATING OIL POLLUTION LIABILITY PROTECTION ACT

Sections

70.149.040 Duties of director. *(Expires June 1, 2013.)*

70.149.040 Duties of director. ***(Expires June 1, 2013.)*** The director shall:

(1) Design a program, consistent with RCW 70.149.120, for providing pollution liability insurance for heating oil tanks that provides up to sixty thousand dollars per occurrence coverage and aggregate limits, and protects the state of Washington from unwanted or unanticipated liability for accidental release claims;

(2) Administer, implement, and enforce the provisions of this chapter. To assist in administration of the program, the director is authorized to appoint up to two employees who are exempt from the civil service law, chapter 41.06 RCW, and who shall serve at the pleasure of the director;

(3) Administer the heating oil pollution liability trust account, as established under RCW 70.149.070;

(4) Employ and discharge, at his or her discretion, agents, attorneys, consultants, companies, organizations, and employees as deemed necessary, and to prescribe their duties and powers, and fix their compensation;

(5) Adopt rules under chapter 34.05 RCW as necessary to carry out the provisions of this chapter;

(6) Design and from time to time revise a reinsurance contract providing coverage to an insurer or insurers meeting the requirements of this chapter. The director is authorized to provide reinsurance through the pollution liability insurance program trust account;

(7) Solicit bids from insurers and select an insurer to provide pollution liability insurance for third-party bodily injury and property damage, and corrective action to owners and operators of heating oil tanks;

(8) Register, and design a means of accounting for, operating heating oil tanks;

(9) Implement a program to provide advice and technical assistance to owners and operators of active and abandoned heating oil tanks if contamination from an active or abandoned heating oil tank is suspected. Advice and assistance regarding administrative and technical requirements may include observation of testing or site assessment and review of the results of reports. If the director finds that contamination is not present or that the contamination is apparently minor and not a threat to human health or the environment, the director may provide written opinions and conclusions on the results of the investigation to owners and operators of active and abandoned heating oil tanks. The agency is authorized to collect, from persons requesting advice and assistance, the costs incurred by the agency in providing such

advice and assistance. The costs may include travel costs and expenses associated with review of reports and preparation of written opinions and conclusions. Funds from cost reimbursement must be deposited in the heating oil pollution liability trust account. The state of Washington, the pollution liability insurance agency, and its officers and employees are immune from all liability, and no cause of action arises from any act or omission in providing, or failing to provide, such advice, opinion, conclusion, or assistance;

(10) Establish a public information program to provide information regarding liability, technical, and environmental requirements associated with active and abandoned heating oil tanks;

(11) Monitor agency expenditures and seek to minimize costs and maximize benefits to ensure responsible financial stewardship;

(12) Study if appropriate user fees to supplement program funding are necessary and develop recommendations for legislation to authorize such fees. [2009 c 560 § 11; 2007 c 240 § 1; 2004 c 203 § 1; 1997 c 8 § 1; 1995 c 20 § 4.]

Intent—Effective date—Disposition of property and funds—Assignment/delegation of contractual rights or duties—2009 c 560: See notes following RCW 18.06.080.

Application—2007 c 240: See note following RCW 70.149.120.

Chapter 70.155 RCW
TOBACCO—ACCESS TO MINORS

Sections

70.155.010 Definitions.
70.155.105 Repealed.
70.155.140 Shipping or transporting tobacco products ordered or purchased by mail or through the internet prohibited—Penalty.

70.155.010 Definitions. The definitions set forth in RCW 82.24.010 shall apply to this chapter. In addition, for the purposes of this chapter, unless otherwise required by the context:

(1) "Board" means the Washington state liquor control board.

(2) "Internet" means any computer network, telephonic network, or other electronic network.

(3) "Minor" refers to an individual who is less than eighteen years old.

(4) "Sample" means a tobacco product distributed to members of the general public at no cost or at nominal cost for product promotion purposes.

(5) "Sampling" means the distribution of samples to members of the public.

(6) "Tobacco product" means a product that contains tobacco and is intended for human use, including any product defined in RCW 82.24.010(2) or 82.26.010(1), except that for the purposes of RCW 70.155.140 only, "tobacco product" does not include cigars defined in RCW 82.26.010 as to which one thousand units weigh more than three pounds. [2009 c 278 § 1; 2006 c 14 § 2; 2003 c 113 § 1; 1993 c 507 § 2.]

Reviser's note: In an order on motion for reconsideration and request for stay pending appeal dated September 25, 2006, the United States District Court for the Western District ruled that chapter 14, Laws of 2006 is preempted by the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. Sec. 1334(b) only in application of the law to cigarette sampling. (Case No. C06-5223, W.D. Wash. 2006.)

Finding—Intent—2006 c 14: See note following RCW 70.155.050.

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

70.155.140 Shipping or transporting tobacco products ordered or purchased by mail or through the internet prohibited—Penalty. (1) A person may not:

(a) Ship or transport, or cause to be shipped or transported, any tobacco product ordered or purchased by mail or through the internet to anyone in this state other than a licensed wholesaler or retailer; or

(b) With knowledge or reason to know of the violation, provide substantial assistance to a person who is in violation of this section.

(2)(a) A person who knowingly violates subsection (1) of this section is guilty of a class C felony, except that the maximum fine that may be imposed is five thousand dollars.

(b) In addition to or in lieu of any other civil or criminal remedy provided by law, a person who has violated subsection (1) of this section is subject to a civil penalty of up to five thousand dollars for each violation. The attorney general, acting in the name of the state, may seek recovery of the penalty in a civil action in superior court. For purposes of this subsection, each shipment or transport of tobacco products constitutes a separate violation.

(3) The attorney general may seek an injunction in superior court to restrain a threatened or actual violation of subsection (1) of this section and to compel compliance with subsection (1) of this section.

(4) Any violation of subsection (1) of this section is not reasonable in relation to the development and preservation of business and is an unfair and deceptive act or practice and an unfair method of competition in the conduct of trade or commerce in violation of RCW 19.86.020. Standing to bring an action to enforce RCW 19.86.020 for violation of subsection (1) of this section lies solely with the attorney general. Remedies provided by chapter 19.86 RCW are cumulative and not exclusive.

(5)(a) In any action brought under this section, the state is entitled to recover, in addition to other relief, the costs of investigation, expert witness fees, costs of the action, and reasonable attorneys' fees.

(b) If a court determines that a person has violated subsection (1) of this section, the court shall order any profits, gain, gross receipts, or other benefit from the violation to be disgorged and paid to the state treasurer for deposit in the general fund.

(6) Unless otherwise expressly provided, the penalties or remedies, or both, under this section are in addition to any other penalties and remedies available under any other law of this state. [2009 c 278 § 2.]

Chapter 70.164 RCW
LOW-INCOME RESIDENTIAL WEATHERIZATION PROGRAM

Sections

70.164.020 Definitions.

70.164.040 Proposals for low-income weatherization programs—Matching funds.
70.164.050 Program compliance with laws and rules—Energy audit required.
70.164.060 Weatherization of leased or rented residences—Limitations.

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

(1) "Credit enhancement" means instruments that enhance the security for the payment of the lender's obligations and includes, but is not limited to insurance, letters of credit, lines of credit, or other similar agreements.

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

(3) "Direct outreach" means:

(a) The use of door-to-door contact, community events, and other methods of direct interaction with customers to inform them of energy efficiency and weatherization opportunities; and

(b) The performance of energy audits.

(4) "Energy audit" means an analysis of a dwelling unit to determine the need for cost-effective energy conservation measures as determined by the department.

(5) "Energy efficiency services" means energy audits, weatherization, energy efficiency retrofits, energy management systems as defined in RCW 39.35.030, and other activities to reduce a customer's energy consumption, and includes assistance with paperwork, arranging for financing, program design and development, and other postenergy audit assistance and education to help customers meet their energy savings goals.

(6) "Financial institution" means any person doing business under the laws of this state or the United States relating to banks, bank holding companies, savings banks, trust companies, savings and loan associations, credit unions, consumer loan companies, equipment leasing and project finance and the affiliates, subsidiaries, and service corporations thereof.

(7) "Household" means an individual or group of individuals living in a dwelling unit as defined by the department.

(8) "Low income" means household income as defined by the department, provided that the definition may not exceed eighty percent of median household income, adjusted for household size, for the county in which the dwelling unit to be weatherized is located.

(9) "Nonutility sponsor" means any sponsor other than a public service company, municipality, public utility district, mutual or cooperative, furnishing gas or electricity used to heat low-income residences.

(10) "Residence" means a dwelling unit as defined by the department.

(11) "Sponsor" means any entity that submits a proposal under RCW 70.164.040, including but not limited to any local community action agency, tribal nation, community service agency, or any other participating agency or any public service company, municipality, public utility district, mutual or cooperative, or any combination of such entities that jointly submits a proposal.

(12) "Sponsor match" means the share of the cost of weatherization to be paid by the sponsor.

(13) "Sustainable residential weatherization" or "weatherization" means activities that use funds administered by the department for one or more of the following: (a) Energy and resource conservation; (b) energy efficiency improvements; (c) repairs, indoor air quality improvements, and health and safety improvements; and (d) client education. Funds administered by the department for activities authorized under this subsection may only be used for the preservation of a dwelling unit occupied by a low-income household and must, to the extent feasible, be used to support and advance sustainable technologies.

(14) "Weatherizing agency" means any approved department grantee, tribal nation, or any public service company, municipality, public utility district, mutual or cooperative, or other entity that bears the responsibility for ensuring the performance of weatherization of residences under this chapter and has been approved by the department. [2009 c 565 § 51; 2009 c 379 § 201; 1995 c 399 § 199; 1987 c 36 § 2.]

Reviser's note: This section was amended by 2009 c 379 § 201 and by 2009 c 565 § 51, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Finding—Intent—Effective date—2009 c 379: See notes following RCW 70.260.010.

70.164.040 Proposals for low-income weatherization programs—Matching funds. (1) The department shall solicit proposals for low-income weatherization programs from potential sponsors. A proposal shall state the amount of the sponsor match, the amount requested, the name of the weatherizing agency, and any other information required by the department.

(2)(a) A sponsor may use its own moneys, including corporate or ratepayer moneys, or moneys provided by landlords, charitable groups, government programs, the Bonneville power administration, or other sources to pay the sponsor match.

(b) Moneys provided by a sponsor pursuant to requirements in this section shall be in addition to and shall not supplant any funding for low-income weatherization that would otherwise have been provided by the sponsor or any other entity enumerated in (a) of this subsection.

(c) No proposal may require any contribution as a condition of weatherization from any household whose residence is weatherized under the proposal.

(d) Proposals shall provide that full levels of all cost-effective, structurally feasible, sustainable residential weatherization materials, measures, and practices, as determined by the department, shall be installed when a low-income residence is weatherized.

(3)(a) The department may in its discretion accept, accept in part, or reject proposals submitted. The department shall allocate funds appropriated from the low-income weatherization assistance account among proposals accepted or accepted in part so as to:

(i) Achieve the greatest possible expected monetary and energy savings by low-income households and other energy consumers over the longest period of time;

(ii) Identify and correct, to the extent practical, health and safety problems for residents of low-income households, including asbestos, lead, and mold hazards;

(iii) Create family-wage jobs that may lead to careers in the construction trades or in the energy efficiency sectors; and

(iv) Leverage, to the extent feasible, environmentally friendly sustainable technologies, practices, and designs.

(b) The department shall, to the extent feasible, ensure a balance of participation in proportion to population among low-income households for: (i) Geographic regions in the state; (ii) types of fuel used for heating, except that the department shall encourage the use of energy efficient sustainable technologies; (iii) owner-occupied and rental residences; and (iv) single-family and multifamily dwellings.

(c) The department shall give priority to the weatherization of dwelling units occupied by low-income households with incomes at or below one hundred twenty-five percent of the federally established poverty level.

(d) The department may allocate funds to a nonutility sponsor without requiring a sponsor match if the department determines that such an allocation is necessary to provide the greatest benefits to low-income residents of the state.

(e) The department shall require sponsors to employ individuals trained from workforce training and apprentice programs established under chapter 536, Laws of 2009 if these workers are available, pay prevailing wages under chapter 39.12 RCW, hire from the community in which the program is located, and create employment opportunities for veterans, members of the national guard, and low-income and disadvantaged populations.

(4)(a) A sponsor may elect to: (i) Pay a sponsor match as a lump sum at the time of weatherization, or (ii) make yearly payments to the low-income weatherization assistance account over a period not to exceed ten years. If a sponsor elects to make yearly payments, the value of the payments shall not be less than the value of the lump sum payment that would have been made under (a)(i) of this subsection.

(b) The department may permit a sponsor to meet its match requirement in whole or in part through providing labor, materials, or other in-kind expenditures.

(5) Programs receiving funding under this section must report to the department every six months following the receipt of a grant regarding the number of dwelling units weatherized, the number of jobs created or maintained, and the number of individuals trained through workforce training and apprentice programs, with the last report submitted six months after program completion. The director of the department shall review the accuracy of these reports.

(6) The department shall adopt rules to carry out this section. [2009 c 379 § 202; 1987 c 36 § 4.]

Finding—Intent—Effective date—2009 c 379: See notes following RCW 70.260.010.

70.164.050 Program compliance with laws and rules—Energy audit required. (1) The department is responsible for ensuring that sponsors and weatherizing agencies comply with the state laws, the department's rules, and the sponsor's proposal in carrying out proposals.

(2) Before a residence is weatherized, the department shall require that an energy audit be conducted.

(3) To the greatest extent practicable and allowable under federal rules and regulations, the department shall maximize available federal low-income home energy assistance program funding for weatherization projects. [2009 c 379 § 203; 1987 c 36 § 5.]

Finding—Intent—Effective date—2009 c 379: See notes following RCW 70.260.010.

70.164.060 Weatherization of leased or rented residences—Limitations. Before a leased or rented residence is weatherized, written permission shall be obtained from the owner of the residence for the weatherization. The department shall adopt rules to ensure that: (1) The benefits of weatherization assistance, including utility bill reduction and preservation of affordable housing stock, accrue primarily to low-income tenants occupying a leased or rented residence; (2) as a result of weatherization provided under this chapter, the rent on the residence is not increased and the tenant is not evicted; and (3) as a result of weatherization provided under this chapter, no undue or excessive enhancement occurs in the value of the residence. This section is in the public interest and any violation by a landlord of the rules adopted under this section shall be an act in trade or commerce violating chapter 19.86 RCW, the consumer protection act. [2009 c 379 § 204; 1987 c 36 § 6.]

Finding—Intent—Effective date—2009 c 379: See notes following RCW 70.260.010.

Chapter 70.190 RCW
FAMILY POLICY COUNCIL

Sections

70.190.010 Definitions.
70.190.100 Duties of council.
70.190.930 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. *(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*

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

(1) "Administrative costs" means the costs associated with procurement; payroll processing; personnel functions; management; maintenance and operation of space and property; data processing and computer services; accounting; budgeting; auditing; indirect costs; and organizational planning, consultation, coordination, and training.

(2) "Assessment" has the same meaning as provided in RCW 43.70.010.

(3) "At-risk behaviors" means violent delinquent acts, teen substance abuse, teen pregnancy and male parentage, teen suicide attempts, dropping out of school, child abuse or neglect, and domestic violence.

(4) "At-risk" children are children who engage in or are victims of at-risk behaviors.

(5) "Community public health and safety networks" or "networks" means the organizations authorized under RCW 70.190.060.

(6) "Comprehensive plan" means a two-year plan that examines available resources and unmet needs for a county or multicounty area, barriers that limit the effective use of resources, and a plan to address these issues that is broadly supported by local residents.

(7) "Family policy council" or "council" means the superintendent of public instruction, the secretary of social and health services, the secretary of health, the commissioner of the employment security department, and the director of the department of commerce or their designees, one legislator from each caucus of the senate and house of representatives, and one representative of the governor.

(8) "Fiduciary interest" means (a) the right to compensation from a health, educational, social service, or justice system organization that receives public funds, or (b) budgetary or policy-making authority for an organization listed in (a) of this subsection. A person who acts solely in an advisory capacity and receives no compensation from a health, educational, social service, or justice system organization, and who has no budgetary or policy-making authority is deemed to have no fiduciary interest in the organization.

(9) "Matching funds" means an amount no less than twenty-five percent of the amount budgeted for a network. The network's matching funds may be in-kind goods and services. Funding sources allowable for match include appropriate federal or local levy funds, private charitable funding, and other charitable giving. Basic education funds or state general funds shall not be used as a match.

(10) "Outcome" or "outcome based" means defined and measurable outcomes used to evaluate progress in reducing the rate of at-risk children and youth through reducing risk factors and increasing protective factors.

(11) "Participating state agencies" means the office of the superintendent of public instruction, the department of social and health services, the department of health, the employment security department, the department of commerce, and such other departments as may be specifically designated by the governor.

(12) "Policy development" has the same meaning as provided in RCW 43.70.010.

(13) "Protective factors" means those factors determined by the department of health to be empirically associated with behaviors that contribute to socially acceptable and healthy nonviolent behaviors. Protective factors include promulgation, identification, and acceptance of community norms regarding appropriate behaviors in the area of delinquency, early sexual activity, alcohol and substance abuse, educational opportunities, employment opportunities, and absence of crime.

(14) "Risk factors" means those factors determined by the department of health to be empirically associated with at-risk behaviors that contribute to violence. [2009 c 565 § 52; 2009 c 479 § 58; 1996 c 132 § 2; 1995 c 399 § 200; 1992 c 198 § 3.]

Reviser's note: (1) The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

(2) This section was amended by 2009 c 479 § 58 and by 2009 c 565 § 52, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2009 c 479: See note following RCW 2.56.030.

Intent—Construction—1996 c 132: "It is the intent of this act only to make minimal clarifying, technical, and administrative revisions to the laws concerning community public health and safety networks and to the related agencies responsible for implementation of the networks. This act is not intended to change the scope of the duties or responsibilities, nor to undermine the underlying policies, set forth in chapter 7, Laws of 1994 sp. sess." [1996 c 132 § 1.]

Severability—1996 c 132: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1996 c 132 § 10.]

70.190.100 Duties of council. The family policy council shall:

(1) Establish network boundaries no later than July 1, 1994. There is a presumption that no county may be divided between two or more community networks and no network shall have fewer than forty thousand population. When approving multicounty networks, considering dividing a county between networks, or creating a network with a population of less than forty thousand, the council must consider: (a) Common economic, geographic, and social interests; (b) historical and existing shared governance; and (c) the size and location of population centers. Individuals and groups within any area shall be given ample opportunity to propose network boundaries in a manner designed to assure full consideration of their expressed wishes;

(2) Develop a technical assistance and training program to assist communities in creating and developing community networks and comprehensive plans;

(3) Approve the structure, purpose, goals, plan, and performance measurements of each community network;

(4) Identify all prevention and early intervention programs and funds, including all programs set forth in RCW 70.190.110, which could be transferred, in all or part, to the community networks, and report their findings and recommendations to the governor and the legislature regarding any appropriate program transfers by January 1 of each year;

(5) Reward community networks that show exceptional success as provided in RCW 43.41.195;

(6) Seek every opportunity to maximize federal and other funding that is consistent with the plans approved by the council for the purpose and goals of this chapter;

(7) Review the state-funded out-of-home placement rate before the end of each contract to determine whether the region has sufficiently reduced the rate. If the council determines that there has not been a sufficient reduction in the rate, it may reduce the immediately succeeding grant to the network;

(8)(a) The council shall monitor the implementation of programs contracted by participating state agencies by reviewing periodic reports on the extent to which services were delivered to intended populations, the quality of services, and the extent to which service outcomes were achieved at the conclusion of service interventions. This monitoring shall include provision for periodic feedback to community networks;

(b) The legislature intends that this monitoring be used by the Washington state institute for public policy, together with public health data on at-risk behaviors and risk and protective factors, to produce an external evaluation of the effectiveness of the networks and their programs. For this reason, and to conserve public funds, the council shall not conduct or contract for the conduct of control group studies, quasi-experimental design studies, or other analysis efforts to attempt to determine the impact of network programs on at-risk behaviors or risk and protective factors; and

(9) Review the implementation of chapter 7, Laws of 1994 sp. sess. The report shall use measurable performance standards to evaluate the implementation. [2009 c 479 § 59; 1998 c 245 § 123; 1994 sp.s. c 7 § 307.]

Effective date—2009 c 479: See note following RCW 2.56.030.

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

70.190.930 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. ***(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 156.]

Chapter 70.198 RCW

EARLY INTERVENTION SERVICES—HEARING LOSS

Sections

70.198.020 Advisory council—Membership.

70.198.020 Advisory council—Membership. (1) There is established an advisory council in the department of social and health services for the purpose of advancing the development of a comprehensive and effective statewide system to provide prompt and effective early interventions for children in the state who are deaf or hard of hearing and their families.

(2) Members of the advisory council shall have training, experience, or interest in hearing loss in children. Membership shall include, but not be limited to, the following: Pediatricians; audiologists; teachers of the deaf and hard of hearing; parents of children who are deaf or hard of hearing; a representative from the Washington state center for childhood deafness and hearing loss; and representatives of the infant toddler early intervention program in the department of social and health services, the department of health, and the office of the superintendent of public instruction. [2009 c 381 § 33; 2004 c 47 § 2.]

Findings—Intent—2009 c 381: See note following RCW 72.40.015.

Chapter 70.235 RCW

LIMITING GREENHOUSE GAS EMISSIONS

Sections

70.235.050 Greenhouse gas emission limits for state agencies—Timeline—Reports—Strategy—Point of accountability employee for energy and climate change initiatives.
70.235.060 Emissions calculator for estimating aggregate emissions—Reports.
70.235.070 Distribution of funds for infrastructure and capital development projects—Prerequisites.

70.235.050 Greenhouse gas emission limits for state agencies—Timeline—Reports—Strategy—Point of accountability employee for energy and climate change initiatives. (1) All state agencies shall meet the statewide greenhouse gas emission limits established in RCW 70.235.020 to achieve the following, using the estimates and strategy established in subsections (2) and (3) of this section:

(a) By July 1, 2020, reduce emissions by fifteen percent from 2005 emission levels;

(b) By 2035, reduce emissions to thirty-six percent below 2005 levels; and

(c) By 2050, reduce emissions to the greater reduction of fifty-seven and one-half percent below 2005 levels, or seventy percent below the expected state government emissions that year.

(2)(a) By June 30, 2010, all state agencies shall report estimates of emissions for 2005 to the department, including 2009 levels of emissions, and projected emissions through 2035.

(b) State agencies required to report under RCW 70.94.151 must estimate emissions from methodologies recommended by the department and must be based on actual operation of those agencies. Agencies not required to report under RCW 70.94.151 shall derive emissions estimates using an emissions calculator provided by the department.

(3) By June 30, 2011, each state agency shall submit to the department a strategy to meet the requirements in subsection (1) of this section. The strategy must address employee travel activities, teleconferencing alternatives, and include existing and proposed actions, a timeline for reductions, and recommendations for budgetary and other incentives to reduce emissions, especially from employee business travel.

(4) By October 1st of each even-numbered year beginning in 2012, each state agency shall report to the department the actions taken to meet the emission reduction targets under the strategy for the preceding fiscal biennium. The department may authorize the department of general administration to report on behalf of any state agency having fewer than five hundred full-time equivalent employees at any time during the reporting period. The department shall cooperate with the department of general administration and the department of community, trade, and economic development to develop consolidated reporting methodologies that incorporate emission reduction actions taken across all or substantially all state agencies.

(5) All state agencies shall cooperate in providing information to the department, the department of general administration, and the department of community, trade, and economic development for the purposes of this section.

(6) The governor shall designate a person as the single point of accountability for all energy and climate change ini-

tiatives within state agencies. This position must be funded from current full-time equivalent allocations without increasing budgets or staffing levels. If duties must be shifted within an agency, they must be shifted among current full-time equivalent allocations. All agencies, councils, or work groups with energy or climate change initiatives shall coordinate with this designee. [2009 c 519 § 2.]

Findings—2009 c 519: See RCW 43.21M.900.

70.235.060 Emissions calculator for estimating aggregate emissions—Reports. (1) The department shall develop an emissions calculator to assist state agencies in estimating aggregate emissions as well as in estimating the relative emissions from different ways in carrying out activities.

(2) The department may use data such as totals of building space occupied, energy purchases and generation, motor vehicle fuel purchases and total mileage driven, and other reasonable sources of data to make these estimates. The estimates may be derived from a single methodology using these or other factors, except that for the top ten state agencies in occupied building space and vehicle miles driven, the estimates must be based upon the actual and projected operations of those agencies. The estimates may be adjusted, and reasonable estimates derived, when agencies have been created since 1990 or functions reorganized among state agencies since 1990. The estimates may incorporate projected emissions reductions that also affect state agencies under the program authorized in RCW 70.235.020 and other existing policies that will result in emissions reductions.

(3) By December 31st of each even-numbered year beginning in 2010, the department shall report to the governor and to the appropriate committees of the senate and house of representatives the total state agencies' emissions of greenhouse gases for 2005 and the preceding two years and actions taken to meet the emissions reduction targets. [2009 c 519 § 5.]

Findings—2009 c 519: See RCW 43.21M.900.

70.235.070 Distribution of funds for infrastructure and capital development projects—Prerequisites. Beginning in 2010, when distributing capital funds through competitive programs for infrastructure and economic development projects, all state agencies must consider whether the entity receiving the funds has adopted policies to reduce greenhouse gas emissions. Agencies also must consider whether the project is consistent with:

(1) The state's limits on the emissions of greenhouse gases established in RCW 70.235.020;

(2) Statewide goals to reduce annual per capita vehicle miles traveled by 2050, in accordance with RCW 47.01.440, except that the agency shall consider whether project locations in rural counties, as defined in RCW 43.160.020, will maximize the reduction of vehicle miles traveled; and

(3) Applicable federal emissions reduction requirements. [2009 c 519 § 9.]

Findings—2009 c 519: See RCW 43.21M.900.

Chapter 70.245 RCW
THE WASHINGTON DEATH WITH DIGNITY ACT

Sections

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70.245.903 Effective dates—2009 c 1 (Initiative Measure No. 1000).
70.245.904 Captions, part headings, and subpart headings not law—2009 c 1 (Initiative Measure No. 1000).

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

(1) "Adult" means an individual who is eighteen years of age or older.

(2) "Attending physician" means the physician who has primary responsibility for the care of the patient and treatment of the patient's terminal disease.

(3) "Competent" means that, in the opinion of a court or in the opinion of the patient's attending physician or consulting physician, psychiatrist, or psychologist, a patient has the ability to make and communicate an informed decision to health care providers, including communication through persons familiar with the patient's manner of communicating if those persons are available.

(4) "Consulting physician" means a physician who is qualified by specialty or experience to make a professional diagnosis and prognosis regarding the patient's disease.

(5) "Counseling" means one or more consultations as necessary between a state licensed psychiatrist or psychologist and a patient for the purpose of determining that the patient is competent and not suffering from a psychiatric or psychological disorder or depression causing impaired judgment.

(6) "Health care provider" means a person licensed, certified, or otherwise authorized or permitted by law to administer health care or dispense medication in the ordinary course of business or practice of a profession, and includes a health care facility.

(7) "Informed decision" means a decision by a qualified patient, to request and obtain a prescription for medication that the qualified patient may self-administer to end his or her life in a humane and dignified manner, that is based on an

appreciation of the relevant facts and after being fully informed by the attending physician of:

(a) His or her medical diagnosis;

(b) His or her prognosis;

(c) The potential risks associated with taking the medication to be prescribed;

(d) The probable result of taking the medication to be prescribed; and

(e) The feasible alternatives including, but not limited to, comfort care, hospice care, and pain control.

(8) "Medically confirmed" means the medical opinion of the attending physician has been confirmed by a consulting physician who has examined the patient and the patient's relevant medical records.

(9) "Patient" means a person who is under the care of a physician.

(10) "Physician" means a doctor of medicine or osteopathy licensed to practice medicine in the state of Washington.

(11) "Qualified patient" means a competent adult who is a resident of Washington state and has satisfied the requirements of this chapter in order to obtain a prescription for medication that the qualified patient may self-administer to end his or her life in a humane and dignified manner.

(12) "Self-administer" means a qualified patient's act of ingesting medication to end his or her life in a humane and dignified manner.

(13) "Terminal disease" means an incurable and irreversible disease that has been medically confirmed and will, within reasonable medical judgment, produce death within six months. [2009 c 1 § 1 (Initiative Measure No. 1000, approved November 4, 2008).]

70.245.020 Written request for medication. (1) An adult who is competent, is a resident of Washington state, and has been determined by the attending physician and consulting physician to be suffering from a terminal disease, and who has voluntarily expressed his or her wish to die, may make a written request for medication that the patient may self-administer to end his or her life in a humane and dignified manner in accordance with this chapter.

(2) A person does not qualify under this chapter solely because of age or disability. [2009 c 1 § 2 (Initiative Measure No. 1000, approved November 4, 2008).]

70.245.030 Form of the written request. (1) A valid request for medication under this chapter shall be in substantially the form described in RCW 70.245.220, signed and dated by the patient and witnessed by at least two individuals who, in the presence of the patient, attest that to the best of their knowledge and belief the patient is competent, acting voluntarily, and is not being coerced to sign the request.

(2) One of the witnesses shall be a person who is not:

(a) A relative of the patient by blood, marriage, or adoption;

(b) A person who at the time the request is signed would be entitled to any portion of the estate of the qualified patient upon death under any will or by operation of law; or

(c) An owner, operator, or employee of a health care facility where the qualified patient is receiving medical treatment or is a resident.

(3) The patient's attending physician at the time the request is signed shall not be a witness.

(4) If the patient is a patient in a long-term care facility at the time the written request is made, one of the witnesses shall be an individual designated by the facility and having the qualifications specified by the department of health by rule. [2009 c 1 § 3 (Initiative Measure No. 1000, approved November 4, 2008).]

70.245.040 Attending physician responsibilities. (1) The attending physician shall:

(a) Make the initial determination of whether a patient has a terminal disease, is competent, and has made the request voluntarily;

(b) Request that the patient demonstrate Washington state residency under RCW 70.245.130;

(c) To ensure that the patient is making an informed decision, inform the patient of:

(i) His or her medical diagnosis;

(ii) His or her prognosis;

(iii) The potential risks associated with taking the medication to be prescribed;

(iv) The probable result of taking the medication to be prescribed; and

(v) The feasible alternatives including, but not limited to, comfort care, hospice care, and pain control;

(d) Refer the patient to a consulting physician for medical confirmation of the diagnosis, and for a determination that the patient is competent and acting voluntarily;

(e) Refer the patient for counseling if appropriate under RCW 70.245.060;

(f) Recommend that the patient notify next of kin;

(g) Counsel the patient about the importance of having another person present when the patient takes the medication prescribed under this chapter and of not taking the medication in a public place;

(h) Inform the patient that he or she has an opportunity to rescind the request at any time and in any manner, and offer the patient an opportunity to rescind at the end of the fifteen-day waiting period under RCW 70.245.090;

(i) Verify, immediately before writing the prescription for medication under this chapter, that the patient is making an informed decision;

(j) Fulfill the medical record documentation requirements of RCW 70.245.120;

(k) Ensure that all appropriate steps are carried out in accordance with this chapter before writing a prescription for medication to enable a qualified patient to end his or her life in a humane and dignified manner; and

(l)(i) Dispense medications directly, including ancillary medications intended to facilitate the desired effect to minimize the patient's discomfort, if the attending physician is authorized under statute and rule to dispense and has a current drug enforcement administration certificate; or

(ii) With the patient's written consent:

(A) Contact a pharmacist and inform the pharmacist of the prescription; and

(B) Deliver the written prescription personally, by mail or facsimile to the pharmacist, who will dispense the medications directly to either the patient, the attending physician, or an expressly identified agent of the patient. Medications dis-

pensed pursuant to this subsection shall not be dispensed by mail or other form of courier.

(2) The attending physician may sign the patient's death certificate which shall list the underlying terminal disease as the cause of death. [2009 c 1 § 4 (Initiative Measure No. 1000, approved November 4, 2008).]

70.245.050 Consulting physician confirmation. Before a patient is qualified under this chapter, a consulting physician shall examine the patient and his or her relevant medical records and confirm, in writing, the attending physician's diagnosis that the patient is suffering from a terminal disease, and verify that the patient is competent, is acting voluntarily, and has made an informed decision. [2009 c 1 § 5 (Initiative Measure No. 1000, approved November 4, 2008).]

70.245.060 Counseling referral. If, in the opinion of the attending physician or the consulting physician, a patient may be suffering from a psychiatric or psychological disorder or depression causing impaired judgment, either physician shall refer the patient for counseling. Medication to end a patient's life in a humane and dignified manner shall not be prescribed until the person performing the counseling determines that the patient is not suffering from a psychiatric or psychological disorder or depression causing impaired judgment. [2009 c 1 § 6 (Initiative Measure No. 1000, approved November 4, 2008).]

70.245.070 Informed decision. A person shall not receive a prescription for medication to end his or her life in a humane and dignified manner unless he or she has made an informed decision. Immediately before writing a prescription for medication under this chapter, the attending physician shall verify that the qualified patient is making an informed decision. [2009 c 1 § 7 (Initiative Measure No. 1000, approved November 4, 2008).]

70.245.080 Notification of next of kin. The attending physician shall recommend that the patient notify the next of kin of his or her request for medication under this chapter. A patient who declines or is unable to notify next of kin shall not have his or her request denied for that reason. [2009 c 1 § 8 (Initiative Measure No. 1000, approved November 4, 2008).]

70.245.090 Written and oral requests. To receive a prescription for medication that the qualified patient may self-administer to end his or her life in a humane and dignified manner, a qualified patient shall have made an oral request and a written request, and reiterate the oral request to his or her attending physician at least fifteen days after making the initial oral request. At the time the qualified patient makes his or her second oral request, the attending physician shall offer the qualified patient an opportunity to rescind the request. [2009 c 1 § 9 (Initiative Measure No. 1000, approved November 4, 2008).]

70.245.100 Right to rescind request. A patient may rescind his or her request at any time and in any manner without regard to his or her mental state. No prescription for medication under this chapter may be written without the attending physician offering the qualified patient an opportunity to rescind the request. [2009 c 1 § 10 (Initiative Measure No. 1000, approved November 4, 2008).]

70.245.110 Waiting periods. (1) At least fifteen days shall elapse between the patient's initial oral request and the writing of a prescription under this chapter.

(2) At least forty-eight hours shall elapse between the date the patient signs the written request and the writing of a prescription under this chapter. [2009 c 1 § 11 (Initiative Measure No. 1000, approved November 4, 2008).]

70.245.120 Medical record documentation requirements. The following shall be documented or filed in the patient's medical record:

(1) All oral requests by a patient for medication to end his or her life in a humane and dignified manner;

(2) All written requests by a patient for medication to end his or her life in a humane and dignified manner;

(3) The attending physician's diagnosis and prognosis, and determination that the patient is competent, is acting voluntarily, and has made an informed decision;

(4) The consulting physician's diagnosis and prognosis, and verification that the patient is competent, is acting voluntarily, and has made an informed decision;

(5) A report of the outcome and determinations made during counseling, if performed;

(6) The attending physician's offer to the patient to rescind his or her request at the time of the patient's second oral request under RCW 70.245.090; and

(7) A note by the attending physician indicating that all requirements under this chapter have been met and indicating the steps taken to carry out the request, including a notation of the medication prescribed. [2009 c 1 § 12 (Initiative Measure No. 1000, approved November 4, 2008).]

70.245.130 Residency requirement. Only requests made by Washington state residents under this chapter may be granted. Factors demonstrating Washington state residency include but are not limited to:

(1) Possession of a Washington state driver's license;

(2) Registration to vote in Washington state; or

(3) Evidence that the person owns or leases property in Washington state. [2009 c 1 § 13 (Initiative Measure No. 1000, approved November 4, 2008).]

70.245.140 Disposal of unused medications. Any medication dispensed under this chapter that was not self-administered shall be disposed of by lawful means. [2009 c 1 § 14 (Initiative Measure No. 1000, approved November 4, 2008).]

70.245.150 Reporting of information to the department of health—Adoption of rules—Information collected not a public record—Annual statistical report. (1)(a) The department of health shall annually review all records maintained under this chapter.

(b) The department of health shall require any health care provider upon writing a prescription or dispensing med-

ication under this chapter to file a copy of the dispensing record and such other administratively required documentation with the department. All administratively required documentation shall be mailed or otherwise transmitted as allowed by department of health rule to the department no later than thirty calendar days after the writing of a prescription and dispensing of medication under this chapter, except that all documents required to be filed with the department by the prescribing physician after the death of the patient shall be mailed no later than thirty calendar days after the date of death of the patient. In the event that anyone required under this chapter to report information to the department of health provides an inadequate or incomplete report, the department shall contact the person to request a complete report.

(2) The department of health shall adopt rules to facilitate the collection of information regarding compliance with this chapter. Except as otherwise required by law, the information collected is not a public record and may not be made available for inspection by the public.

(3) The department of health shall generate and make available to the public an annual statistical report of information collected under subsection (2) of this section. [2009 c 1 § 15 (Initiative Measure No. 1000, approved November 4, 2008).]

70.245.160 Effect on construction of wills, contracts, and statutes. (1) Any provision in a contract, will, or other agreement, whether written or oral, to the extent the provision would affect whether a person may make or rescind a request for medication to end his or her life in a humane and dignified manner, is not valid.

(2) Any obligation owing under any currently existing contract shall not be conditioned or affected by the making or rescinding of a request, by a person, for medication to end his or her life in a humane and dignified manner. [2009 c 1 § 16 (Initiative Measure No. 1000, approved November 4, 2008).]

70.245.170 Insurance or annuity policies. The sale, procurement, or issuance of any life, health, or accident insurance or annuity policy or the rate charged for any policy shall not be conditioned upon or affected by the making or rescinding of a request, by a person, for medication that the patient may self-administer to end his or her life in a humane and dignified manner. A qualified patient's act of ingesting medication to end his or her life in a humane and dignified manner shall not have an effect upon a life, health, or accident insurance or annuity policy. [2009 c 1 § 17 (Initiative Measure No. 1000, approved November 4, 2008).]

70.245.180 Authority of chapter—References to practices under this chapter—Applicable standard of care. (1) Nothing in this chapter authorizes a physician or any other person to end a patient's life by lethal injection, mercy killing, or active euthanasia. Actions taken in accordance with this chapter do not, for any purpose, constitute suicide, assisted suicide, mercy killing, or homicide, under the law. State reports shall not refer to practice under this chapter as "suicide" or "assisted suicide." Consistent with RCW 70.245.010 (7), (11), and (12), 70.245.020(1), 70.245.040(1)(k), 70.245.060, 70.245.070, 70.245.090, 70.245.120 (1) and (2), 70.245.160 (1) and (2), 70.245.170, 70.245.190(1) (a) and (d), and 70.245.200(2), state reports shall refer to practice under this chapter as obtaining and self-administering life-ending medication.

(2) Nothing contained in this chapter shall be interpreted to lower the applicable standard of care for the attending physician, consulting physician, psychiatrist or psychologist, or other health care provider participating under this chapter. [2009 c 1 § 18 (Initiative Measure No. 1000, approved November 4, 2008).]

70.245.190 Immunities—Basis for prohibiting health care provider from participation—Notification—Permissible sanctions. (1) Except as provided in RCW 70.245.200 and subsection (2) of this section:

(a) A person shall not be subject to civil or criminal liability or professional disciplinary action for participating in good faith compliance with this chapter. This includes being present when a qualified patient takes the prescribed medication to end his or her life in a humane and dignified manner;

(b) A professional organization or association, or health care provider, may not subject a person to censure, discipline, suspension, loss of license, loss of privileges, loss of membership, or other penalty for participating or refusing to participate in good faith compliance with this chapter;

(c) A patient's request for or provision by an attending physician of medication in good faith compliance with this chapter does not constitute neglect for any purpose of law or provide the sole basis for the appointment of a guardian or conservator; and

(d) Only willing health care providers shall participate in the provision to a qualified patient of medication to end his or her life in a humane and dignified manner. If a health care provider is unable or unwilling to carry out a patient's request under this chapter, and the patient transfers his or her care to a new health care provider, the prior health care provider shall transfer, upon request, a copy of the patient's relevant medical records to the new health care provider.

(2)(a) A health care provider may prohibit another health care provider from participating under chapter 1, Laws of 2009 on the premises of the prohibiting provider if the prohibiting provider has given notice to all health care providers with privileges to practice on the premises and to the general public of the prohibiting provider's policy regarding participating under chapter 1, Laws of 2009. This subsection does not prevent a health care provider from providing health care services to a patient that do not constitute participation under chapter 1, Laws of 2009.

(b) A health care provider may subject another health care provider to the sanctions stated in this subsection if the sanctioning health care provider has notified the sanctioned provider before participation in chapter 1, Laws of 2009 that it prohibits participation in chapter 1, Laws of 2009:

(i) Loss of privileges, loss of membership, or other sanctions provided under the medical staff bylaws, policies, and procedures of the sanctioning health care provider if the sanctioned provider is a member of the sanctioning provider's medical staff and participates in chapter 1, Laws of 2009 while on the health care facility premises of the sanctioning health care provider, but not including the private medical office of a physician or other provider;

(ii) Termination of a lease or other property contract or other nonmonetary remedies provided by a lease contract, not including loss or restriction of medical staff privileges or exclusion from a provider panel, if the sanctioned provider participates in chapter 1, Laws of 2009 while on the premises of the sanctioning health care provider or on property that is owned by or under the direct control of the sanctioning health care provider; or

(iii) Termination of a contract or other nonmonetary remedies provided by contract if the sanctioned provider participates in chapter 1, Laws of 2009 while acting in the course and scope of the sanctioned provider's capacity as an employee or independent contractor of the sanctioning health care provider. Nothing in this subsection (2)(b)(iii) prevents:

(A) A health care provider from participating in chapter 1, Laws of 2009 while acting outside the course and scope of the provider's capacity as an employee or independent contractor; or

(B) A patient from contracting with his or her attending physician and consulting physician to act outside the course and scope of the provider's capacity as an employee or independent contractor of the sanctioning health care provider.

(c) A health care provider that imposes sanctions under (b) of this subsection shall follow all due process and other procedures the sanctioning health care provider may have that are related to the imposition of sanctions on another health care provider.

(d) For the purposes of this subsection:

(i) "Notify" means a separate statement in writing to the health care provider specifically informing the health care provider before the provider's participation in chapter 1, Laws of 2009 of the sanctioning health care provider's policy about participation in activities covered by this chapter.

(ii) "Participate in chapter 1, Laws of 2009" means to perform the duties of an attending physician under RCW 70.245.040, the consulting physician function under RCW 70.245.050, or the counseling function under RCW 70.245.060. "Participate in chapter 1, Laws of 2009" does not include:

(A) Making an initial determination that a patient has a terminal disease and informing the patient of the medical prognosis;

(B) Providing information about the Washington death with dignity act to a patient upon the request of the patient;

(C) Providing a patient, upon the request of the patient, with a referral to another physician; or

(D) A patient contracting with his or her attending physician and consulting physician to act outside of the course and scope of the provider's capacity as an employee or independent contractor of the sanctioning health care provider.

(3) Suspension or termination of staff membership or privileges under subsection (2) of this section is not reportable under RCW 18.130.070. Action taken under RCW 70.245.030, 70.245.040, 70.245.050, or 70.245.060 may not be the sole basis for a report of unprofessional conduct under RCW 18.130.180.

(4) References to "good faith" in subsection (1)(a), (b), and (c) of this section do not allow a lower standard of care for health care providers in the state of Washington. [2009 c 1 § 19 (Initiative Measure No. 1000, approved November 4, 2008).]

70.245.200 Willful alteration/forgery—Coercion or undue influence—Penalties—Civil damages—Other penalties not precluded. (1) A person who without authorization of the patient willfully alters or forges a request for medication or conceals or destroys a rescission of that request with the intent or effect of causing the patient's death is guilty of a class A felony.

(2) A person who coerces or exerts undue influence on a patient to request medication to end the patient's life, or to destroy a rescission of a request, is guilty of a class A felony.

(3) This chapter does not limit further liability for civil damages resulting from other negligent conduct or intentional misconduct by any person.

(4) The penalties in this chapter do not preclude criminal penalties applicable under other law for conduct that is inconsistent with this chapter. [2009 c 1 § 20 (Initiative Measure No. 1000, approved November 4, 2008).]

70.245.210 Claims by governmental entity for costs incurred. Any governmental entity that incurs costs resulting from a person terminating his or her life under this chapter in a public place has a claim against the estate of the person to recover such costs and reasonable attorneys' fees related to enforcing the claim. [2009 c 1 § 21 (Initiative Measure No. 1000, approved November 4, 2008).]

70.245.220 Form of the request. A request for a medication as authorized by this chapter shall be in substantially the following form:

REQUEST FOR MEDICATION TO END MY LIFE IN A HUMAN [HUMANE] AND DIGNIFIED MANNER

I, ..., am an adult of sound mind.

I am suffering from . . . . . ., which my attending physician has determined is a terminal disease and which has been medically confirmed by a consulting physician.

I have been fully informed of my diagnosis, prognosis, the nature of medication to be prescribed and potential associated risks, the expected result, and the feasible alternatives, including comfort care, hospice care, and pain control.

I request that my attending physician prescribe medication that I may self-administer to end my life in a humane and dignified manner and to contact any pharmacist to fill the prescription.

INITIAL ONE:

. . . . . I have informed my family of my decision and taken their opinions into consideration.

. . . . . I have decided not to inform my family of my decision.

. . . . . I have no family to inform of my decision.

I understand that I have the right to rescind this request at any time.

I understand the full import of this request and I expect to die when I take the medication to be prescribed. I further understand that although most deaths occur within three hours, my death may take longer and my physician has counseled me about this possibility.

I make this request voluntarily and without reservation, and I accept full moral responsibility for my actions.

Signed: . . . . . .

Dated: . . . . . .

DECLARATION OF WITNESSES

By initialing and signing below on or after the date the person named above signs, we declare that the person making and signing the above request:

Witness 1 Initials	Witness 2 Initials	
. . . . .	. . . . .	1. Is personally known to us or has provided proof of identity;
. . . . .	. . . . .	2. Signed this request in our presence on the date of the person's signature;
. . . . .	. . . . .	3. Appears to be of sound mind and not under duress, fraud, or undue influence;
. . . . .	. . . . .	4. Is not a patient for whom either of us is the attending physician.

Printed Name of Witness 1: . . . . . .

Signature of Witness 1/Date: . . . . . .

Printed Name of Witness 2: . . . . . .

Signature of Witness 2/Date: . . . . . .

NOTE: One witness shall not be a relative by blood, marriage, or adoption of the person signing this request, shall not be entitled to any portion of the person's estate upon death, and shall not own, operate, or be employed at a health care facility where the person is a patient or resident. If the patient is an inpatient at a health care facility, one of the witnesses shall be an individual designated by the facility. [2009 c 1 § 22 (Initiative Measure No. 1000, approved November 4, 2008).]

70.245.901 Short title—2009 c 1 (Initiative Measure No. 1000). This act may be known and cited as the Washington death with dignity act. [2009 c 1 § 26 (Initiative Measure No. 1000, approved November 4, 2008).]

70.245.902 Severability—2009 c 1 (Initiative Measure No. 1000). If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2009 c 1 § 27 (Initiative Measure No. 1000, approved November 4, 2008).]

70.245.903 Effective dates—2009 c 1 (Initiative Measure No. 1000). This act takes effect one hundred twenty days after the election at which it is approved [March 5, 2009], except for section 24 of this act which takes effect July 1, 2009. [2009 c 1 § 28 (Initiative Measure No. 1000, approved November 4, 2008).]

70.245.904 Captions, part headings, and subpart headings not law—2009 c 1 (Initiative Measure No. 1000). Captions, part headings, and subpart headings used in this act are not any part of the law. [2009 c 1 § 30 (Initiative Measure No. 1000, approved November 4, 2008).]

Chapter 70.250 RCW
ADVANCED DIAGNOSTIC IMAGING WORK GROUP

Sections

70.250.010 Definitions.
70.250.020 Work group—Members—Duties—Report—Expiration of work group.
70.250.030 Implementation of evidence-based best practice guidelines or protocols.
70.250.040 Application of section 135(a) of the medicare improvements for patients and providers act of 2008.
70.250.900 Effective date—2009 c 258.

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

(1) "Advanced diagnostic imaging services" means magnetic resonance imaging services, computed tomography services, positron emission tomography services, cardiac nuclear medicine services, and similar new imaging services.

(2) "Authority" means the Washington state health care authority.

(3) "Payor" means public purchasers and carriers licensed under chapters 48.21, 48.41, 48.44, 48.46, and 48.62 RCW.

(4) "Public purchaser" means the department of social and health services, the department of health, the department of labor and industries, the authority, and the Washington state health insurance pool.

(5) "State purchased health care" has the same meaning as in RCW 41.05.011. [2009 c 258 § 1.]

70.250.020 Work group—Members—Duties—Report—Expiration of work group. (1) Consistent with the authority granted in RCW 41.05.013, the authority shall convene a work group to analyze and identify evidence-based best practice guidelines or protocols applicable to advanced diagnostic imaging services and any decision support tools available to implement the guidelines or protocols.

(2) The administrator of the authority shall appoint work group members, including at least:

(a) One member of the authority's health technology clinical committee;

(b) One representative of the Washington state medical association;

(c) One representative of the Washington state radiological society;

(d) One representative of the Puget Sound health alliance;

(e) One representative of the Washington health care forum;

(f) One representative of the Washington state hospital association;

(g) One representative of health carriers as defined in chapter 48.43 RCW; and

(h) One representative of each public purchaser.

(3) The work group shall:

(a) No later than July 1, 2009, identify evidence-based best practice guidelines or protocols and decision support tools applicable to advanced diagnostic imaging services to be implemented by all state purchased health care programs, except for state purchased health care services that are purchased from or through health carriers as defined in RCW 48.43.005. When identifying the guidelines or protocols, the work group may consult with organizations such as the Minnesota institute for clinical systems improvement; and

(b) Explore the feasibility of using the guidelines or protocols for state purchased health care services that are purchased from or through health carriers and all payors in the state by January 1, 2011, for the reimbursement of advanced diagnostic imaging services.

(4) The work group may solicit such federal or private funds and in-kind contributions as may be necessary to complete its work in a timely fashion. However, no member of the work group shall be compensated for his or her service.

(5) The work group shall report its findings and recommendations to the governor and the appropriate committees of the legislature no later than July 1, 2009.

(6) The work group shall cease to exist on July 1, 2010. [2009 c 258 § 2.]

70.250.030 Implementation of evidence-based best practice guidelines or protocols. No later than September 1, 2009, all state purchased health care programs shall, except for state purchased health care services that are purchased from or through health carriers as defined in RCW 48.43.005, implement evidence-based best practice guidelines or protocols applicable to advanced diagnostic imaging services, and the decision support tools to implement the guidelines or protocols, identified under RCW 70.250.020. [2009 c 258 § 3.]

70.250.040 Application of section 135(a) of the medicare improvements for patients and providers act of 2008. Any current or future time frames, procedures, rules, regulations, or guidance regarding accreditation requirements for advanced diagnostic imaging services established in, or promulgated pursuant to, section 135(a) of the medicare improvements for patients and providers act of 2008, shall also be applicable to any person or entity in this state not already subject to its provisions that receives payment for the furnishing of the technical component of advanced diagnostic imaging services as defined under that act. [2009 c 258 § 4.]

70.250.900 Effective date—2009 c 258. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 28, 2009]. [2009 c 258 § 5.]

Chapter 70.255 RCW
NOVELTY LIGHTERS

Sections

70.255.010 Definitions.
70.255.020 Prohibition on the distribution or offer to sell novelty lighters.
70.255.030 Civil penalty—Jurisdiction.
70.255.040 Manufacturers must cease sale or distribution.

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

(1) "Authority having jurisdiction" means the local organization, office, or individual responsible for enforcing the requirements of the state fire code.

(2) "Director" means the director of fire protection appointed under RCW 43.43.938.

(3) "Distribute" means to do any of the following:

(a) Sell novelty lighters or deliver novelty lighters for sale by another person to consumers;

(b) Sell or accept orders for novelty lighters that are to be transported from a point outside this state to a consumer within this state;

(c) Buy novelty lighters directly from a manufacturer or wholesale dealer for resale in this state;

(d) Give novelty lighters as a sample, prize, gift, or other promotion.

(4) "Manufacturer" means:

(a) An entity that produces, or causes the production of, novelty lighters for sale in this state;

(b) An importer or first purchaser of novelty lighters that intends to resell within this state novelty lighters that were produced for sale outside this state; or

(c) A successor to an entity, importer, or first purchaser described in (a) or (b) of this subsection.

(5)(a) "Novelty lighter" means a lighter that can operate on any fuel, including butane or liquid fuel. Novelty lighters have features that are attractive to children, including but not limited to visual effects, flashing lights, musical sounds, and toylike designs. The term considers the shape of the lighter to be the most important characteristic when determining whether a lighter can be considered a novelty lighter.

(b) "Novelty lighter" does not include disposable cigarette lighters or lighters that are printed or decorated with logos, decals, artwork, or heat shrinkable sleeves.

(6) "Retail dealer" means an entity at one location, other than a manufacturer or wholesale dealer, that engages in distributing novelty lighters.

(7) "Sell" means to transfer, or agree to transfer, title or possession for a monetary or nonmonetary consideration.

(8) "Wholesale dealer" means an entity that distributes novelty lighters to a retail dealer or other person for resale. [2009 c 273 § 1.]

70.255.020 Prohibition on the distribution or offer to sell novelty lighters. (1) A person may not distribute or offer to sell a novelty lighter within this state if the director determines the novelty lighter is prohibited for sale or distribution under this chapter.

(2) This section does not apply if the novelty lighters are in interstate commerce and not intended for distribution in this state.

(3) The authority having jurisdiction shall enforce the provisions of this chapter. [2009 c 273 § 2.]

70.255.030 Civil penalty—Jurisdiction. (1) The authority having jurisdiction may impose a civil penalty for a violation of this chapter. The civil penalty may not exceed:

(a) For a wholesale dealer that distributes or offers to sell novelty lighters to retail dealers or consumers, a written warning for the first violation and a monetary penalty of five hundred dollars for each subsequent violation.

(b) For a retail dealer that distributes or offers to sell novelty lighters to consumers, a written warning for the first violation and a monetary penalty of two hundred fifty dollars for each subsequent violation.

(2) The authority having jurisdiction may bring an action seeking:

(a) Injunctive relief to prevent or end a violation of this chapter;

(b) To recover civil penalties imposed under subsection (1) of this section; or

(c) To recover attorneys' fees and other enforcement costs and disbursements.

(3) Penalties under this section must be deposited in an account designated by the authority having jurisdiction.

(4) A district court has jurisdiction over all proceedings brought under this section. [2009 c 273 § 3.]

70.255.040 Manufacturers must cease sale or distribution. (1) On July 26, 2009, manufacturers must immediately cease the sale or distribution of novelty lighters in this state.

(2) On July 26, 2009, wholesalers and retail dealers have a maximum of ninety days to reduce their current inventory of novelty lighters. In no instance may wholesalers and retail dealers sell or distribute a novelty lighter in this state after ninety days from July 26, 2009. [2009 c 273 § 4.]

Chapter 70.260 RCW
ENERGY EFFICIENCY IMPROVEMENTS

Sections

70.260.010 Definitions.
70.260.020 Grants for pilot programs providing urban residential and commercial energy efficiency upgrades—Requirements of pilot programs—Report to the governor and legislature.
70.260.030 Farm energy efficiency improvements.

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

(1) "Customers" means residents, businesses, and building owners.

(2) "Direct outreach" means:

(a) The use of door-to-door contact, community events, and other methods of direct interaction with customers to inform them of energy efficiency and weatherization opportunities; and

(b) The performance of energy audits.

(3) "Energy audit" means an assessment of building energy efficiency opportunities, from measures that require very little investment and without any disruption to building operation, normally involving general building operational measures, to low or relatively higher cost investment, such as installing timers to turn off equipment, replacing light bulbs, installing insulation, replacing equipment and appliances with higher efficiency equipment and appliances, and similar measures. The term includes an assessment of alternatives for generation of heat and power from renewable energy resources, including installation of solar water heating and equipment for photovoltaic electricity generation.

(4) "Energy efficiency and conservation block grant program" means the federal program created under the energy independence and security act of 2007 (P.L. 110-140).

(5) "Energy efficiency services" means energy audits, weatherization, energy efficiency retrofits, energy management systems as defined in RCW 39.35.030, and other activities to reduce a customer's energy consumption, and includes assistance with paperwork, arranging for financing, program design and development, and other postenergy audit assistance and education to help customers meet their energy savings goals.

(6) "Low-income individual" means an individual whose annual household income does not exceed eighty percent of the area median income for the metropolitan, micropolitan, or combined statistical area in which that individual resides as determined annually by the United States department of housing and urban development.

(7) "Sponsor" means any entity or group of entities that submits a proposal under RCW 70.260.020, including but not limited to any nongovernmental nonprofit organization, local community action agency, tribal nation, community service agency, public service company, county, municipality, publicly owned electric, or natural gas utility.

(8) "Sponsor match" means the share, if any, of the cost of efficiency improvements to be paid by the sponsor.

(9) "Weatherization" means making energy and resource conservation and energy efficiency improvements. [2009 c 379 § 101.]

Finding—Intent—2009 c 379: "(1) The legislature finds that improving energy efficiency in structures is one of the most cost-effective means to meet energy requirements, and that while there have been significant efficiency savings achieved in the state over the past quarter century, there remains enormous potential to achieve even greater savings. Increased weatherization and more extensive efficiency improvements in residential, commercial, and public buildings achieves many benefits, including reducing energy bills, avoiding the construction of new electricity generating facilities with associated climate change impacts, and creation of family-wage jobs in performing energy audits and improvements.

(2) It is the intent of the legislature that financial and technical assistance programs be expanded to direct municipal, state, and federal funds, as well as electric and natural gas utility funding, toward greater achievement of energy efficiency improvements. To this end, the legislature establishes a policy goal of assisting in weatherizing twenty thousand homes and businesses in the state in each of the next five years. The legislature also intends to attain this goal in part through supporting programs that rely on community organizations and that there be maximum family-wage job creation in fields related to energy efficiency." [2009 c 379 § 1.]

Effective date—2009 c 379: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 7, 2009]." [2009 c 379 § 405.]

70.260.020 Grants for pilot programs providing urban residential and commercial energy efficiency upgrades—Requirements of pilot programs—Report to the governor and legislature. The Washington State University extension energy program is authorized to implement grants for pilot programs providing community-wide urban residential and commercial energy efficiency upgrades. The Washington State University extension energy program must coordinate and collaborate with the department of commu-

nity, trade, and economic development on the design, administration, and implementation elements of the pilot program.

(1) There must be at least three grants for pilot programs, awarded on a competitive basis to sponsors for conducting direct outreach and delivering energy efficiency services that, to the extent feasible, ensure a balance of participation for: (a) Geographic regions in the state; (b) types of fuel used for heating; (c) owner-occupied and rental residences; (d) small commercial buildings; and (e) single-family and multifamily dwellings.

(2) The pilot programs must:

(a) Provide assistance for energy audits and energy efficiency-related improvements to structures owned by or used for residential, commercial, or nonprofit purposes in specified urban neighborhoods where the objective is to achieve a high rate of participation among building owners within the pilot area;

(b) Utilize volunteer support to reach out to potential customers through the use of community-based institutions;

(c) Employ qualified energy auditors and energy efficiency service providers to perform the energy audits using recognized energy efficiency and weatherization services that are cost-effective;

(d) Select and provide oversight of contractors to perform energy efficiency services. Sponsors shall require contractors to participate in quality control and efficiency training, use workers trained from workforce training and apprentice programs established under chapter 536, Laws of 2009 if these workers are available, pay prevailing wages under chapter 39.12 RCW, hire from the community in which the program is located, and create employment opportunities for veterans, members of the national guard, and low-income and disadvantaged populations; and

(e) Work with customers to secure financing for their portion of the project and apply for and administer utility, public, and charitable funding provided for energy audits and retrofits.

(3) The Washington State University extension energy program must give priority to sponsors that can secure a sponsor match of at least one dollar for each dollar awarded.

(a) A sponsor may use its own moneys, including corporate or ratepayer moneys, or moneys provided by landlords, charitable groups, government programs, the Bonneville power administration, or other sources to pay the sponsor match.

(b) A sponsor may meet its match requirement in whole or in part through providing labor, materials, or other in-kind expenditures.

(4)(a) Pilot programs receiving funding must report compliance with performance metrics for each sponsor receiving a grant award. The performance metrics include:

(i) Monetary and energy savings achieved;

(ii) Savings-to-investment ratio achieved for customers;

(iii) Wage levels of jobs created;

(iv) Utilization of preapprentice and apprenticeship programs; and

(v) Efficiency and speed of delivery of services.

(b) Pilot programs receiving funding under this section are required to report to the Washington State University energy extension [extension energy] program on compliance with the performance metrics every six months following the receipt of grants, with the last report submitted six months after program completion.

(c) The Washington State University extension energy program shall review the accuracy of these reports and provide a progress report on all grant pilot programs to the appropriate committees of the legislature by December 1st of each year.

(5)(a) By December 1, 2009, the Washington State University extension energy program shall provide a report to the governor and appropriate legislative committees on the: Number of grants awarded; number of jobs created or maintained; number and type of individuals trained through workforce training and apprentice programs; number of veterans, members of the national guard, and individuals of low-income and disadvantaged populations employed by pilot programs; and amount of funding provided through the grants as established in subsection (1) of this section and the performance metrics established in subsection (4) of this section.

(b) By December 1, 2010, the Washington State University extension energy program shall provide a final report to the governor and appropriate legislative committees on the: Number of grants awarded; number of jobs created or maintained; number and type of individuals trained through workforce training and apprentice programs; number of veterans, members of the national guard, and individuals of low-income and disadvantaged populations employed by pilot programs; and amount of funding provided through the grants as established in subsection (1) of this section and the performance metrics established in subsection (4) of this section. [2009 c 379 § 102.]

Finding—Intent—Effective date—2009 c 379: See notes following RCW 70.260.010.

70.260.030 Farm energy efficiency improvements. (1) The legislature finds that increasing energy costs put farm viability and competitiveness at risk and that energy efficiency improvements on the farm are the most cost-effective way to manage these costs. The legislature further finds that current on-farm energy efficiency programs often miss opportunities to evaluate and conserve all types of energy, including fuels and fertilizers.

(2) The Washington State University extension energy program, in consultation with the department of agriculture, shall form an interdisciplinary team of agricultural and energy extension agencies to develop and offer new methods to help agricultural producers assess their opportunities to increase energy efficiency in all aspects of their operations. The interdisciplinary team must develop and deploy:

(a) Online energy self-assessment software tools to allow agricultural producers to assess whole-farm energy use and to identify the most cost-effective efficiency opportunities;

(b) Energy auditor training curricula specific to the agricultural sector and designed for use by agricultural producers, conservation districts, agricultural extensions, and commodity groups;

(c) An effective infrastructure of trained energy auditors available to assist agricultural producers with on-farm energy audits and identify cost-share assistance for efficiency improvements; and

(d) Measurement systems for cost savings, energy savings, and carbon emission reduction benefits resulting from efficiency improvements identified by the interdisciplinary team.

(3) The Washington State University extension energy program shall seek to obtain additional resources for this section from federal and state agricultural assistance programs and from other sources.

(4) The Washington State University extension energy program shall provide technical assistance for farm energy assessment activities as specified in this section. [2009 c 379 § 103.]

Finding—Intent—Effective date—2009 c 379: See notes following RCW 70.260.010.

Chapter 70.265 RCW
PUBLIC HOSPITAL CAPITAL FACILITY AREAS

Sections

70.265.010 Finding.
70.265.020 Definitions.
70.265.030 Establishing a public hospital capital facility area—Process.
70.265.040 Petition for formation of a public hospital capital facility area less than the entire county—Process.
70.265.050 Governing body.
70.265.060 Authority to construct, acquire, purchase, maintain, add to, and remodel facilities—Interlocal agreements—Legal title.
70.265.070 Financing—Bonds authorized.
70.265.080 Dissolution of public hospital capital facility area.
70.265.090 Limitations on legal challenges.
70.265.100 Treasurer—Duties—Funds—Surety bonds.
70.265.110 Contracting with other entities to provide hospital facilities or hospital services.
70.265.900 Severability—2009 c 481.
70.265.901 Captions not law—2009 c 481.

70.265.010 Finding. The legislature finds that it is in the interests of the people of the state of Washington to be able to establish public hospital capital facility areas as quasi-municipal corporations and independent taxing units existing within the boundaries of counties composed entirely of islands that receive medical services from an existing public hospital district but are not annexed to an existing public hospital district for the purpose of financing the construction, additions, or betterments of capital hospital facilities or other capital health care facilities. [2009 c 481 § 1.]

70.265.020 Definitions. (1) "Hospital capital facilities" include both real and personal property including land, buildings, site improvements, equipment, furnishings, collections, and all necessary costs related to acquisition, financing, design, construction, equipping, and remodeling.

(2) "Other capital health care facilities" means nursing home, extended care, long-term care, outpatient and rehabilitative facilities, ambulances, and such other facilities as are appropriate to the health needs of the population served.

(3) "Public hospital capital facility area" means a quasi-municipal corporation and independent taxing authority within the meaning of Article VII, section 1 of the state Constitution, and a taxing district within the meaning of Article VII, section 2 of the state Constitution, created by a county legislative authority of a county composed entirely of islands that receives medical services from a hospital district, but is prevented by geography and the absence of contiguous boundaries from annexing to that district. A public hospital capital facility area may include all or a portion of a city or town. [2009 c 481 § 2.]

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

70.265.030 Establishing a public hospital capital facility area—Process. (1)(a) Upon receipt of a completed petition to both establish a public hospital capital facility area and submit a ballot proposition under RCW 70.265.070 to finance public hospital capital facilities and other capital health care facilities, the legislative authority of the county in which a proposed public hospital capital facility area is to be established shall submit separate ballot propositions to voters to authorize establishing the proposed public hospital capital facility area and authorizing the public hospital capital facility area, if established, to finance public hospital capital facilities or other capital health care facilities by issuing general indebtedness and imposing excess levies to retire the indebtedness. A petition submitted under this section must be accompanied by a written request to establish a public hospital capital facility area that is signed by a majority of the commissioners of the public hospital district serving the proposed area.

(b) The ballot propositions must be submitted to voters of the proposed public hospital capital facility area at a general or special election. If the proposed election date is not a general election, the county legislative authority is encouraged to request an election when another unit of local government with territory located in the proposed public hospital capital facility area is already holding a special election under RCW 29A.04.330. Approval of the ballot proposition to create a public hospital capital facility area requires a simple majority vote by the voters participating in the election.

(2) A completed petition submitted under this section must include:

(a) A description of the boundaries of the public hospital capital facility area; and

(b) A copy of a resolution of the legislative authority of each city, town, and hospital district with territory in the proposed public hospital capital facility area indicating both: (i) Approval of the creation of the proposed public hospital capital facility area; and (ii) agreement on how election costs will be paid for ballot propositions to voters that authorize the public hospital capital facility area to incur general indebtedness and impose excess levies to retire the general indebtedness. [2009 c 481 § 3.]

70.265.040 Petition for formation of a public hospital capital facility area less than the entire county—Process. Any petition for the formation of a public hospital capital facility area may describe an area less than the entire county in which the petition is filed, the boundaries of which must follow the then existing precinct boundaries and not divide any voting precinct; and in the event that a petition is filed containing not less than ten percent of the voters of the proposed public hospital capital facility area who voted at the last general election, certified by the auditor in like manner as for a countywide district, the board of county commissioners shall fix a date for a hearing on the petition, and shall publish the petition, without the signatures thereto appended, for two

weeks prior to the date of the hearing, together with a notice stating the time of the meeting when the petition will be heard. Publications required by this chapter must be in a newspaper published in the proposed public hospital capital facility area, or, if there be no such newspaper, then in a newspaper published in the county in which the public hospital capital facility area is situated, and of general circulation in that county. The hearing on the petition may be adjourned from time to time, not exceeding four weeks in all. If upon the final hearing the board of county commissioners finds that any lands have been unjustly or improperly included within the proposed public hospital capital facility area the board shall change and fix the boundary lines in such manner as it deems reasonable and just and conducive to the welfare and convenience, and make and enter an order establishing and defining the boundary lines of the proposed public hospital capital facility area: PROVIDED, That no lands may be included within the boundaries so fixed lying outside the boundaries described in the petition, except upon the written request of the owners of those lands. [2009 c 481 § 4.]

70.265.050 Governing body. The governing body of the public hospital capital facility area must consist of three members of the county legislative authority from each county in which the public hospital capital facility area is located. In counties that have more than three members of their legislative body, the three members who serve on the governing body of the public hospital capital facility area must be chosen by the full membership of the county legislative authority. [2009 c 481 § 5.]

70.265.060 Authority to construct, acquire, purchase, maintain, add to, and remodel facilities—Interlocal agreements—Legal title. A public hospital capital facility area may construct, acquire, purchase, maintain, add to, and remodel public hospital capital facilities, and the governing body of the public hospital capital facility area may, by interlocal agreement or otherwise, contract with a county, city, town, or public hospital district to design, administer the construction of, operate, or maintain a public hospital capital facility or other capital health care facility financed pursuant to this chapter. Legal title to public hospital capital facilities or other capital health care facilities acquired or constructed pursuant to this chapter may be transferred, acquired, or held by the public hospital capital facility area or by a county, city, town, or public hospital district in which the facility is located and receives service. [2009 c 481 § 6.]

70.265.070 Financing—Bonds authorized. (1) A public hospital capital facility area may contract indebtedness or borrow money to finance public hospital capital facilities and other capital health care facilities and may issue general obligation bonds for such purpose not exceeding an amount, together with any existing indebtedness of the public hospital capital facility area, equal to one and one-quarter percent of the value of the taxable property in the public hospital capital facility area and impose excess property tax levies to retire the general indebtedness as provided in RCW 39.36.050 if a ballot proposition authorizing both the indebtedness and excess levies is approved by at least three-fifths of the voters of the public hospital capital facility area voting on the proposition, and the total number of voters voting on the proposition constitutes not less than forty percent of the total number of voters in the public hospital capital facility area voting at the last preceding general election. The term "value of the taxable property" has the meaning set forth in RCW 39.36.015. The proposition must be submitted to voters at a general or special election and may be submitted to voters at the same election as the election when the ballot proposition authorizing the establishing of the public hospital capital facility area is submitted. If the proposed election date is not a general election, the county legislative authority is encouraged to request an election when another unit of local government with territory located in the proposed public hospital capital facility area is already holding a special election under RCW 29A.04.330.

(2) A public hospital capital facility area may accept gifts or grants of money or property of any kind for the same purposes for which it is authorized to borrow money in subsection (1) of this section. [2009 c 481 § 7.]

70.265.080 Dissolution of public hospital capital facility area. (1) A public hospital capital facility area may be dissolved by a majority vote of the governing body when all obligations under any general obligation bonds issued by the public hospital capital facility area have been discharged and any other contractual obligations of the public hospital capital facility area have either been discharged or assumed by another governmental entity.

(2) A public hospital capital facility area must be dissolved by the governing body if the first two ballot propositions under RCW 70.265.070 that are submitted to voters are not approved. [2009 c 481 § 8.]

70.265.090 Limitations on legal challenges. Unless commenced within thirty days after the date of the filing of the certificate of the canvass of an election on the proposition of creating a new public hospital capital facility area pursuant to this chapter, no lawsuit whatever may be maintained challenging in any way the legal existence of the public hospital capital facility area or the validity of the proceedings had for the organization and creation thereof. If the creation of a public hospital capital facility area is not challenged within the period specified in this section, the public hospital capital facility area conclusively must be deemed duly and regularly organized under the laws of this state. [2009 c 481 § 9.]

70.265.100 Treasurer—Duties—Funds—Surety bonds. (1) The treasurer of the county in which a public hospital capital facility area is located shall be treasurer of the public hospital capital facility area, except that the commission of the public hospital district in which the facility area is located by resolution may designate some other person having experience in financial or fiscal matters as treasurer of the public hospital capital facility area. If the treasurer is not the county treasurer, the commission shall require a bond, with a surety company authorized to do business in the state of Washington, in an amount and under the terms and conditions which the commission by resolution from time to time finds will protect the public hospital capital facility area

against loss. The premium on any such bond must be paid by the public hospital capital facility area.

(2) All public hospital capital facility area funds must be paid to the treasurer and must be disbursed by him or her only on warrants issued by an auditor appointed by the commission, upon orders or vouchers approved by it. The treasurer shall establish a public hospital capital facility area fund, into which all public hospital capital facility area funds must be paid, and he or she shall maintain such special funds as may be created by the commission, into which he or she shall place all money as the commission may, by resolution, direct.

(3) If the treasurer of the district is the treasurer of the county all public hospital capital facility area funds must be deposited with the county depositaries under the same restrictions, contracts, and security as provided for county depositaries. If the treasurer of the public hospital capital facility area is some other person, all funds must be deposited in a bank or banks authorized to do business in this state as the commission by resolution designates, and with surety bond to the public hospital capital facility area or securities in lieu thereof of the kind, no less in amount, for deposit of county funds. The surety bond or securities in lieu thereof must be filed or deposited with the treasurer of the public hospital capital facility area, and approved by resolution of the commission.

(4) All interest collected on public hospital capital facility area funds belong to the public hospital capital facility area and [must] be deposited to its credit in the proper public hospital capital facility area funds.

(5) A public hospital capital facility area may provide and require a reasonable bond of any other person handling moneys or securities of the public hospital capital facility area. The public hospital capital facility area may pay the premium on the bond. [2009 c 481 § 10.]

70.265.110 Contracting with other entities to provide hospital facilities or hospital services. Any public hospital capital facility area may contract or join with any public hospital district, publicly owned hospital, nonprofit hospital, legal entity, or individual to acquire, own, operate, manage, or provide any hospital or other health care facilities or hospital services or other health care services to be used by individuals, districts, hospitals, or others, including providing health maintenance services. If a public hospital capital facility area chooses to contract or join with another party or parties pursuant to the provisions of this chapter, it may do so through establishing a nonprofit corporation, partnership, limited liability company, or other legal entity of its choosing in which the public hospital capital facility area and the other party or parties participate. The governing body of the legal entity must include representatives of the public hospital capital facility area, which representatives may include members of the public hospital district's board of commissioners. A public hospital capital facility area contracting or joining with another party pursuant to the provisions of this chapter may appropriate funds and may sell, lease, or otherwise provide property, personnel, and services to the legal entity established to carry out the contract or joint activity. [2009 c 481 § 11.]

70.265.900 Severability—2009 c 481. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2009 c 481 § 14.]

70.265.901 Captions not law—2009 c 481. Captions used in this act are not any part of the law. [2009 c 481 § 13.]

Chapter 70.270 RCW
REPLACEMENT OF LEAD WHEEL WEIGHTS

Sections

70.270.010 Findings.
70.270.020 Definitions.
70.270.030 Replacement of lead wheel weights with environmentally preferred wheel weights—Failure to comply.
70.270.040 Department's duties—Enforcement sequence.
70.270.050 Penalties.
70.270.060 Adoption of rules.
70.270.900 Severability—2009 c 243.

70.270.010 Findings. The legislature finds that:

(1) Environmental health hazards associated with lead wheel weights are a preventable problem. People are exposed to lead fragments and dust when lead wheel weights fall from motor vehicles onto Washington roadways and are then abraded and pulverized by traffic. Lead wheel weights on and alongside roadways can contribute to soil, surface, and groundwater contamination and pose hazards to downstream aquatic life.

(2) Lead negatively affects every bodily system. While it is injurious to people of all ages, lead is especially harmful to fetuses, children, and adults of childbearing age. Effects of lead on a child's cognitive, behavioral, and developmental abilities may necessitate large expenditures of public funds for health care and special education. Irreversible damage to children and subsequent expenditures could be avoided if exposure to lead is reduced.

(3) There are no federal regulatory controls governing use of lead wheel weights. The legislature recognizes the state's need to protect the public from exposure to lead hazards. [2009 c 243 § 1.]

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

(1) "Department" means the department of ecology.

(2) "Environmentally preferred wheel weight" means any wheel weight used for balancing motor vehicle wheels that do not include more than 0.5 percent by weight of any chemical, group of chemicals, or metal of concern identified by rule under chapter 173-333 WAC.

(3) "Lead wheel weight" means any externally affixed or attached wheel weight used for balancing motor vehicle wheels and composed of greater than 0.1 percent lead by weight.

(4) "Person" includes any individual, firm, association, partnership, corporation, governmental entity, organization, or joint venture.

(5) "Vehicle" means any motor vehicle registered in Washington with a wheel diameter of less than 19.5 inches or

a gross vehicle weight of fourteen thousand pounds or less. [2009 c 243 § 2.]

70.270.030 Replacement of lead wheel weights with environmentally preferred wheel weights—Failure to comply. (1) On and after January 1, 2011, a person who replaces or balances motor vehicle tires must replace lead wheel weights with environmentally preferred wheel weights on all vehicles when they replace or balance tires in Washington. However, the person may use alternatives to lead wheel weights that are determined by the department to not qualify as environmentally preferred wheel weights for up to two years following the date of that determination, but must thereafter use environmentally preferred wheel weights.

(2) A person who is subject to the requirement in subsection (1) of this section must recycle the lead wheel weights that they remove.

(3) A person who fails to comply with subsection (1) of this section is subject to penalties prescribed in RCW 70.270.050. A violation of subsection (1) of this section occurs with respect to each vehicle for which lead wheel weights are not replaced in compliance with subsection (1) of this section.

(4) An owner of a vehicle is not subject to any requirement in this section. [2009 c 243 § 3.]

70.270.040 Department's duties—Enforcement sequence. (1) The department shall achieve compliance with RCW 70.270.030 through the enforcement sequence specified in this section.

(2) To provide assistance in identifying environmentally preferred wheel weights, the department shall, by October 1, 2010, prepare and distribute information regarding this chapter to the maximum extent practicable to:

(a) Persons that replace or balance motor vehicle tires in Washington; and

(b) Persons generally in the motor vehicle tire and wheel weight manufacturing, distribution, wholesale, and retail industries.

(3) The department shall issue a warning letter to a person who fails to comply with RCW 70.270.030 and offer information or other appropriate assistance. If the person does not comply with RCW 70.270.030(1) within one year of the department's issuance of the warning letter, the department may assess civil penalties under RCW 70.270.050. [2009 c 243 § 4.]

70.270.050 Penalties. (1) An initial violation of RCW 70.270.030(1) is punishable by a civil penalty not to exceed five hundred dollars. Subsequent violations of RCW 70.270.030(1) are punishable by civil penalties not to exceed one thousand dollars for each violation.

(2) Penalties collected under this section must be deposited in the state toxics control account created in RCW 70.105D.070. [2009 c 243 § 5.]

70.270.060 Adoption of rules. The department may adopt rules to fully implement this chapter. [2009 c 243 § 6.]

70.270.900 Severability—2009 c 243. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2009 c 243 § 7.]

Title 71

MENTAL ILLNESS

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Chapter 71.05 RCW
MENTAL ILLNESS

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

(1) "Admission" or "admit" means a decision by a physician or psychiatric advanced registered nurse practitioner that a person should be examined or treated as a patient in a hospital;

(2) "Antipsychotic medications" means that class of drugs primarily used to treat serious manifestations of mental illness associated with thought disorders, which includes, but is not limited to atypical antipsychotic medications;

(3) "Attending staff" means any person on the staff of a public or private agency having responsibility for the care and treatment of a patient;

(4) "Commitment" means the determination by a court that a person should be detained for a period of either evaluation or treatment, or both, in an inpatient or a less restrictive setting;

(5) "Conditional release" means a revocable modification of a commitment, which may be revoked upon violation of any of its terms;

(6) "Crisis stabilization unit" means a short-term facility or a portion of a facility licensed by the department of health and certified by the department of social and health services under RCW 71.24.035, such as an evaluation and treatment facility or a hospital, which has been designed to assess, diagnose, and treat individuals experiencing an acute crisis without the use of long-term hospitalization;

(7) "Custody" means involuntary detention under the provisions of this chapter or chapter 10.77 RCW, uninterrupted by any period of unconditional release from commitment from a facility providing involuntary care and treatment;

(8) "Department" means the department of social and health services;

(9) "Designated chemical dependency specialist" means a person designated by the county alcoholism and other drug addiction program coordinator designated under RCW 70.96A.310 to perform the commitment duties described in chapters 70.96A and 70.96B RCW;

(10) "Designated crisis responder" means a mental health professional appointed by the county or the regional support network to perform the duties specified in this chapter;

(11) "Designated mental health professional" means a mental health professional designated by the county or other authority authorized in rule to perform the duties specified in this chapter;

(12) "Detention" or "detain" means the lawful confinement of a person, under the provisions of this chapter;

(13) "Developmental disabilities professional" means a person who has specialized training and three years of experience in directly treating or working with persons with developmental disabilities and is a psychiatrist, psychologist, psychiatric advanced registered nurse practitioner, or social worker, and such other developmental disabilities professionals as may be defined by rules adopted by the secretary;

(14) "Developmental disability" means that condition defined in RCW 71A.10.020(3);

(15) "Discharge" means the termination of hospital medical authority. The commitment may remain in place, be terminated, or be amended by court order;

(16) "Evaluation and treatment facility" means any facility which can provide directly, or by direct arrangement with other public or private agencies, emergency evaluation and treatment, outpatient care, and timely and appropriate inpatient care to persons suffering from a mental disorder, and which is certified as such by the department. A physically separate and separately operated portion of a state hospital may be designated as an evaluation and treatment facility. A facility which is part of, or operated by, the department or any federal agency will not require certification. No correctional institution or facility, or jail, shall be an evaluation and treatment facility within the meaning of this chapter;

(17) "Gravely disabled" means a condition in which a person, as a result of a mental disorder: (a) Is in danger of serious physical harm resulting from a failure to provide for his or her essential human needs of health or safety; or (b) manifests severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control over his or her actions and is not receiving such care as is essential for his or her health or safety;

(18) "Habilitative services" means those services provided by program personnel to assist persons in acquiring and maintaining life skills and in raising their levels of physical, mental, social, and vocational functioning. Habilitative services include education, training for employment, and therapy. The habilitative process shall be undertaken with recognition of the risk to the public safety presented by the person being assisted as manifested by prior charged criminal conduct;

(19) "History of one or more violent acts" refers to the period of time ten years prior to the filing of a petition under this chapter, excluding any time spent, but not any violent acts committed, in a mental health facility or in confinement as a result of a criminal conviction;

(20) "Imminent" means the state or condition of being likely to occur at any moment or near at hand, rather than distant or remote;

(21) "Individualized service plan" means a plan prepared by a developmental disabilities professional with other professionals as a team, for a person with developmental disabilities, which shall state:

(a) The nature of the person's specific problems, prior charged criminal behavior, and habilitation needs;

(b) The conditions and strategies necessary to achieve the purposes of habilitation;

(c) The intermediate and long-range goals of the habilitation program, with a projected timetable for the attainment;

(d) The rationale for using this plan of habilitation to achieve those intermediate and long-range goals;

(e) The staff responsible for carrying out the plan;

(f) Where relevant in light of past criminal behavior and due consideration for public safety, the criteria for proposed movement to less-restrictive settings, criteria for proposed eventual discharge or release, and a projected possible date for discharge or release; and

(g) The type of residence immediately anticipated for the person and possible future types of residences;

(22) "Information related to mental health services" means all information and records compiled, obtained, or maintained in the course of providing services to either voluntary or involuntary recipients of services by a mental health service provider. This may include documents of legal proceedings under this chapter or chapter 71.34 or 10.77 RCW, or somatic health care information;

(23) "Judicial commitment" means a commitment by a court pursuant to the provisions of this chapter;

(24) "Legal counsel" means attorneys and staff employed by county prosecutor offices or the state attorney general acting in their capacity as legal representatives of public mental health service providers under RCW 71.05.130;

(25) "Likelihood of serious harm" means:

(a) A substantial risk that: (i) Physical harm will be inflicted by a person upon his or her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on oneself; (ii) physical harm will be inflicted by a person upon another, as evidenced by behavior which has caused such harm or which places another person or persons in reasonable fear of sustaining such harm; or (iii) physical harm will be inflicted by a person upon the property of others, as evidenced by behavior which has caused substantial loss or damage to the property of others; or

(b) The person has threatened the physical safety of another and has a history of one or more violent acts;

(26) "Mental disorder" means any organic, mental, or emotional impairment which has substantial adverse effects on a person's cognitive or volitional functions;

(27) "Mental health professional" means a psychiatrist, psychologist, psychiatric advanced registered nurse practitioner, psychiatric nurse, or social worker, and such other mental health professionals as may be defined by rules adopted by the secretary pursuant to the provisions of this chapter;

(28) "Mental health service provider" means a public or private agency that provides mental health services to persons with mental disorders as defined under this section and receives funding from public sources. This includes, but is not limited to, hospitals licensed under chapter 70.41 RCW, evaluation and treatment facilities as defined in this section, community mental health service delivery systems or community mental health programs as defined in RCW 71.24.025, facilities conducting competency evaluations and restoration under chapter 10.77 RCW, and correctional facilities operated by state and local governments;

(29) "Peace officer" means a law enforcement official of a public agency or governmental unit, and includes persons specifically given peace officer powers by any state law, local ordinance, or judicial order of appointment;

(30) "Private agency" means any person, partnership, corporation, or association that is not a public agency, whether or not financed in whole or in part by public funds, which constitutes an evaluation and treatment facility or private institution, or hospital, which is conducted for, or includes a department or ward conducted for, the care and treatment of persons who are mentally ill;

(31) "Professional person" means a mental health professional and shall also mean a physician, psychiatric advanced registered nurse practitioner, registered nurse, and such others as may be defined by rules adopted by the secretary pursuant to the provisions of this chapter;

(32) "Psychiatric advanced registered nurse practitioner" means a person who is licensed as an advanced registered nurse practitioner pursuant to chapter 18.79 RCW; and who is board certified in advanced practice psychiatric and mental health nursing;

(33) "Psychiatrist" means a person having a license as a physician and surgeon in this state who has in addition completed three years of graduate training in psychiatry in a program approved by the American medical association or the American osteopathic association and is certified or eligible to be certified by the American board of psychiatry and neurology;

(34) "Psychologist" means a person who has been licensed as a psychologist pursuant to chapter 18.83 RCW;

(35) "Public agency" means any evaluation and treatment facility or institution, or hospital which is conducted for, or includes a department or ward conducted for, the care and treatment of persons with mental illness, if the agency is operated directly by, federal, state, county, or municipal government, or a combination of such governments;

(36) "Registration records" include all the records of the department, regional support networks, treatment facilities, and other persons providing services to the department, county departments, or facilities which identify persons who are receiving or who at any time have received services for mental illness;

(37) "Release" means legal termination of the commitment under the provisions of this chapter;

(38) "Resource management services" has the meaning given in chapter 71.24 RCW;

(39) "Secretary" means the secretary of the department of social and health services, or his or her designee;

(40) "Serious violent offense" has the same meaning as provided in RCW 9.94A.030;

(41) "Social worker" means a person with a master's or further advanced degree from an accredited school of social work or a degree deemed equivalent under rules adopted by the secretary;

(42) "Therapeutic court personnel" means the staff of a mental health court or other therapeutic court which has jurisdiction over defendants who are dually diagnosed with mental disorders, including court personnel, probation officers, a court monitor, prosecuting attorney, or defense counsel acting within the scope of therapeutic court duties;

(43) "Treatment records" include registration and all other records concerning persons who are receiving or who at any time have received services for mental illness, which are maintained by the department, by regional support networks and their staffs, and by treatment facilities. Treatment records include mental health information contained in a medical bill including but not limited to mental health drugs, a mental health diagnosis, provider name, and dates of service stemming from a medical service. Treatment records do not include notes or records maintained for personal use by a person providing treatment services for the department, regional support networks, or a treatment facility if the notes or records are not available to others;

(44) "Violent act" means behavior that resulted in homicide, attempted suicide, nonfatal injuries, or substantial damage to property. [2009 c 320 § 1; 2009 c 217 § 20; 2008 c 156 § 1. Prior: 2007 c 375 § 6; 2007 c 191 § 2; 2005 c 504 § 104; 2000 c 94 § 1; 1999 c 13 § 5; 1998 c 297 § 3; 1997 c 112 § 3; prior: 1989 c 420 § 13; 1989 c 205 § 8; 1989 c 120 § 2; 1979 ex.s. c 215 § 5; 1973 1st ex.s. c 142 § 7.]

Reviser's note: This section was amended by 2009 c 217 § 20 and by 2009 c 320 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Conflict with federal requirements—2009 c 320: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state." [2009 c 320 § 6.]

Findings—Purpose—Construction—Severability—2007 c 375: See notes following RCW 10.31.110.

Alphabetization—Correction of references—2005 c 504: "(1) The code reviser shall alphabetize and renumber the definitions, and correct any internal references affected by this act.

(2) The code reviser shall replace all references to "county designated mental health professional" with "designated mental health professional" in the Revised Code of Washington." [2005 c 504 § 811.]

Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504: See notes following RCW 71.05.027.

Purpose—Construction—1999 c 13: See note following RCW 10.77.010.

Effective dates—Severability—Intent—1998 c 297: See notes following RCW 71.05.010.

71.05.210 Evaluation—Treatment and care—Release or other disposition. Each person involuntarily detained and accepted or admitted at an evaluation and treatment facility (1) shall, within twenty-four hours of his or her admission or acceptance at the facility, be examined and evaluated by (a) a licensed physician who may be assisted by a physician assistant according to chapter 18.71A RCW and a mental health professional, (b) an advanced registered nurse practitioner according to chapter 18.79 RCW and a mental health professional, or (c) a licensed physician and a psychiatric advanced registered nurse practitioner and (2) shall receive such treatment and care as his or her condition requires including treatment on an outpatient basis for the period that he or she is detained, except that, beginning twenty-four hours prior to a trial or hearing pursuant to RCW 71.05.215, 71.05.240, 71.05.310, 71.05.320, 71.05.340, or 71.05.217, the individual may refuse psychiatric medications, but may not refuse: (a) Any other medication previously prescribed by a person licensed under Title 18 RCW; or (b) emergency lifesaving treatment, and the individual shall be informed at an appropriate time of his or her right of such refusal. The person shall be detained up to seventy-two hours, if, in the opinion of the professional person in charge of the facility, or his or her professional designee, the person presents a likelihood of serious harm, or is gravely disabled. A person who has been detained for seventy-two hours shall no later than the end of such period be released, unless referred for further care on a voluntary basis, or detained pursuant to court order for further treatment as provided in this chapter.

If, after examination and evaluation, the mental health professional and licensed physician or psychiatric advanced registered nurse practitioner determine that the initial needs of the person would be better served by placement in a chemical dependency treatment facility, then the person shall be referred to an approved treatment program defined under RCW 70.96A.020.

An evaluation and treatment center admitting or accepting any person pursuant to this chapter whose physical condition reveals the need for hospitalization shall assure that such person is transferred to an appropriate hospital for evaluation or admission for treatment. Notice of such fact shall be given to the court, the designated attorney, and the designated mental health professional and the court shall order such continuance in proceedings under this chapter as may be necessary, but in no event may this continuance be more than fourteen days. [2009 c 217 § 1; 2000 c 94 § 6; 1998 c 297 § 12; 1997 c 112 § 15; 1994 sp.s. c 9 § 747. Prior: 1991 c 364 § 11; 1991 c 105 § 4; 1989 c 120 § 6; 1987 c 439 § 2; 1975 1st ex.s. c 199 § 4; 1974 ex.s. c 145 § 14; 1973 1st ex.s. c 142 § 26.]

Effective dates—Severability—Intent—1998 c 297: See notes following RCW 71.05.010.

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

Findings—Construction—Conflict with federal requirements—1991 c 364: See notes following RCW 70.96A.020.

Severability—1991 c 105: See note following RCW 71.05.215.

71.05.230 Procedures for additional treatment. A person detained for seventy-two hour evaluation and treatment may be detained for not more than fourteen additional days of involuntary intensive treatment or ninety additional days of a less restrictive alternative to involuntary intensive treatment. There shall be no fee for filing petitions for fourteen days of involuntary intensive treatment. A petition may only be filed if the following conditions are met:

(1) The professional staff of the agency or facility providing evaluation services has analyzed the person's condition and finds that the condition is caused by mental disorder and either results in a likelihood of serious harm, or results in the detained person being gravely disabled and are prepared to testify those conditions are met; and

(2) The person has been advised of the need for voluntary treatment and the professional staff of the facility has evidence that he or she has not in good faith volunteered; and

(3) The facility providing intensive treatment is certified to provide such treatment by the department; and

(4) The professional staff of the agency or facility or the designated mental health professional has filed a petition for fourteen day involuntary detention or a ninety day less restrictive alternative with the court. The petition must be signed either by:

(a) Two physicians;

(b) One physician and a mental health professional;

(c) Two psychiatric advanced registered nurse practitioners;

(d) One psychiatric advanced registered nurse practitioner and a mental health professional; or

(e) A physician and a psychiatric advanced registered nurse practitioner. The persons signing the petition must have examined the person. If involuntary detention is sought the petition shall state facts that support the finding that such person, as a result of mental disorder, presents a likelihood of serious harm, or is gravely disabled and that there are no less restrictive alternatives to detention in the best interest of such person or others. The petition shall state specifically that less restrictive alternative treatment was considered and specify why treatment less restrictive than detention is not appropriate. If an involuntary less restrictive alternative is sought, the petition shall state facts that support the finding that such per-

son, as a result of mental disorder, presents a likelihood of serious harm, or is gravely disabled and shall set forth the less restrictive alternative proposed by the facility; and

(5) A copy of the petition has been served on the detained person, his or her attorney and his or her guardian or conservator, if any, prior to the probable cause hearing; and

(6) The court at the time the petition was filed and before the probable cause hearing has appointed counsel to represent such person if no other counsel has appeared; and

(7) The petition reflects that the person was informed of the loss of firearm rights if involuntarily committed; and

(8) At the conclusion of the initial commitment period, the professional staff of the agency or facility or the designated mental health professional may petition for an additional period of either ninety days of less restrictive alternative treatment or ninety days of involuntary intensive treatment as provided in RCW 71.05.290; and

(9) If the hospital or facility designated to provide outpatient treatment is other than the facility providing involuntary treatment, the outpatient facility so designated has agreed to assume such responsibility. [2009 c 293 § 3; 2009 c 217 § 2; 2006 c 333 § 302; 1998 c 297 § 13; 1997 c 112 § 18; 1987 c 439 § 3; 1975 1st ex.s. c 199 § 5; 1974 ex.s. c 145 § 15; 1973 1st ex.s. c 142 § 28.]

Reviser's note: This section was amended by 2009 c 217 § 2 and by 2009 c 293 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Finding—Purpose—Intent—Severability—Part headings not law—Effective dates—2006 c 333: See notes following RCW 71.24.016.

Effective dates—Severability—Intent—1998 c 297: See notes following RCW 71.05.010.

71.05.240 Petition for involuntary treatment or alternative treatment—Probable cause hearing. (1) If a petition is filed for fourteen day involuntary treatment or ninety days of less restrictive alternative treatment, the court shall hold a probable cause hearing within seventy-two hours of the initial detention of such person as determined in RCW 71.05.180. If requested by the detained person or his or her attorney, the hearing may be postponed for a period not to exceed forty-eight hours. The hearing may also be continued subject to the conditions set forth in RCW 71.05.210 or subject to the petitioner's showing of good cause for a period not to exceed twenty-four hours.

(2) The court at the time of the probable cause hearing and before an order of commitment is entered shall inform the person both orally and in writing that the failure to make a good faith effort to seek voluntary treatment as provided in RCW 71.05.230 will result in the loss of his or her firearm rights if the person is subsequently detained for involuntary treatment under this section.

(3) At the conclusion of the probable cause hearing, if the court finds by a preponderance of the evidence that such person, as the result of mental disorder, presents a likelihood of serious harm, or is gravely disabled, and, after considering less restrictive alternatives to involuntary detention and treatment, finds that no such alternatives are in the best interests of such person or others, the court shall order that such person be detained for involuntary treatment not to exceed fourteen days in a facility certified to provide treatment by the department. If the court finds that such person, as the result of a mental disorder, presents a likelihood of serious harm, or is gravely disabled, but that treatment in a less restrictive setting than detention is in the best interest of such person or others, the court shall order an appropriate less restrictive course of treatment for not to exceed ninety days.

(4) The court shall specifically state to such person and give such person notice in writing that if involuntary treatment beyond the fourteen day period or beyond the ninety days of less restrictive treatment is to be sought, such person will have the right to a full hearing or jury trial as required by RCW 71.05.310. The court shall also state to the person and provide written notice that the person is barred from the possession of firearms and that the prohibition remains in effect until a court restores his or her right to possess a firearm under RCW 9.41.047. [2009 c 293 § 4; 1997 c 112 § 19; 1992 c 168 § 3; 1987 c 439 § 5; 1979 ex.s. c 215 § 13; 1974 ex.s. c 145 § 16; 1973 1st ex.s. c 142 § 29.]

Severability—1992 c 168: See note following RCW 9.41.070.

71.05.290 Petition for additional confinement—Affidavit. (1) At any time during a person's fourteen day intensive treatment period, the professional person in charge of a treatment facility or his or her professional designee or the designated mental health professional may petition the superior court for an order requiring such person to undergo an additional period of treatment. Such petition must be based on one or more of the grounds set forth in RCW 71.05.280.

(2) The petition shall summarize the facts which support the need for further confinement and shall be supported by affidavits signed by:

(a) Two examining physicians;

(b) One examining physician and examining mental health professional;

(c) Two psychiatric advanced registered nurse practitioners;

(d) One psychiatric advanced registered nurse practitioner and a mental health professional; or

(e) An examining physician and an examining psychiatric advanced registered nurse practitioner. The affidavits shall describe in detail the behavior of the detained person which supports the petition and shall explain what, if any, less restrictive treatments which are alternatives to detention are available to such person, and shall state the willingness of the affiant to testify to such facts in subsequent judicial proceedings under this chapter.

(3) If a person has been determined to be incompetent pursuant to RCW 10.77.086(4), then the professional person in charge of the treatment facility or his or her professional designee or the designated mental health professional may directly file a petition for one hundred eighty day treatment under RCW 71.05.280(3). No petition for initial detention or fourteen day detention is required before such a petition may be filed. [2009 c 217 § 3; 2008 c 213 § 7; 1998 c 297 § 16; 1997 c 112 § 24; 1986 c 67 § 4; 1975 1st ex.s. c 199 § 6; 1974 ex.s. c 145 § 20; 1973 1st ex.s. c 142 § 34.]

Effective dates—Severability—Intent—1998 c 297: See notes following RCW 71.05.010.

71.05.300 Filing of petition—Appearance—Notice—Advice as to rights—Appointment of attorney, expert, or professional person. (1) The petition for ninety day treatment shall be filed with the clerk of the superior court at least three days before expiration of the fourteen-day period of intensive treatment. At the time of filing such petition, the clerk shall set a time for the person to come before the court on the next judicial day after the day of filing unless such appearance is waived by the person's attorney, and the clerk shall notify the designated mental health professional. The designated mental health professional shall immediately notify the person detained, his or her attorney, if any, and his or her guardian or conservator, if any, the prosecuting attorney, and the regional support network administrator, and provide a copy of the petition to such persons as soon as possible. The regional support network administrator or designee may review the petition and may appear and testify at the full hearing on the petition.

(2) At the time set for appearance the detained person shall be brought before the court, unless such appearance has been waived and the court shall advise him or her of his or her right to be represented by an attorney, his or her right to a jury trial, and his or her loss of firearm rights if involuntarily committed. If the detained person is not represented by an attorney, or is indigent or is unwilling to retain an attorney, the court shall immediately appoint an attorney to represent him or her. The court shall, if requested, appoint a reasonably available licensed physician, psychiatric advanced registered nurse practitioner, psychologist, or psychiatrist, designated by the detained person to examine and testify on behalf of the detained person.

(3) The court may, if requested, also appoint a professional person as defined in RCW 71.05.020 to seek less restrictive alternative courses of treatment and to testify on behalf of the detained person. In the case of a person with a developmental disability who has been determined to be incompetent pursuant to RCW 10.77.086(4), then the appointed professional person under this section shall be a developmental disabilities professional.

(4) The court shall also set a date for a full hearing on the petition as provided in RCW 71.05.310. [2009 c 293 § 5; 2009 c 217 § 4; 2008 c 213 § 8; 2006 c 333 § 303; 1998 c 297 § 17; 1997 c 112 § 25; 1989 c 420 § 14; 1987 c 439 § 8; 1975 1st ex.s. c 199 § 7; 1974 ex.s. c 145 § 21; 1973 1st ex.s. c 142 § 35.]

Reviser's note: This section was amended by 2009 c 217 § 4 and by 2009 c 293 § 5, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Finding—Purpose—Intent—Severability—Part headings not law—Effective dates—2006 c 333: See notes following RCW 71.24.016.

Effective dates—Severability—Intent—1998 c 297: See notes following RCW 71.05.010.

71.05.320 Remand for additional treatment—Less restrictive alternatives—Duration—Grounds—Hearing. (1) If the court or jury finds that grounds set forth in RCW 71.05.280 have been proven and that the best interests of the person or others will not be served by a less restrictive treatment which is an alternative to detention, the court shall remand him or her to the custody of the department or to a facility certified for ninety day treatment by the department for a further period of intensive treatment not to exceed ninety days from the date of judgment. If the grounds set forth in RCW 71.05.280(3) are the basis of commitment, then the period of treatment may be up to but not exceed one hundred eighty days from the date of judgment in a facility certified for one hundred eighty day treatment by the department.

(2) If the court or jury finds that grounds set forth in RCW 71.05.280 have been proven, but finds that treatment less restrictive than detention will be in the best interest of the person or others, then the court shall remand him or her to the custody of the department or to a facility certified for ninety day treatment by the department or to a less restrictive alternative for a further period of less restrictive treatment not to exceed ninety days from the date of judgment. If the grounds set forth in RCW 71.05.280(3) are the basis of commitment, then the period of treatment may be up to but not exceed one hundred eighty days from the date of judgment.

(3) The person shall be released from involuntary treatment at the expiration of the period of commitment imposed under subsection (1) or (2) of this section unless the superintendent or professional person in charge of the facility in which he or she is confined, or in the event of a less restrictive alternative, the designated mental health professional, files a new petition for involuntary treatment on the grounds that the committed person:

(a) During the current period of court ordered treatment: (i) Has threatened, attempted, or inflicted physical harm upon the person of another, or substantial damage upon the property of another, and (ii) as a result of mental disorder or developmental disability presents a likelihood of serious harm; or

(b) Was taken into custody as a result of conduct in which he or she attempted or inflicted serious physical harm upon the person of another, and continues to present, as a result of mental disorder or developmental disability a likelihood of serious harm; or

(c) Is in custody pursuant to RCW 71.05.280(3) and as a result of mental disorder or developmental disability presents a substantial likelihood of repeating similar acts considering the charged criminal behavior, life history, progress in treatment, and the public safety; or

(d) Continues to be gravely disabled.

If the conduct required to be proven in (b) and (c) of this subsection was found by a judge or jury in a prior trial under this chapter, it shall not be necessary to prove such conduct again.

(4) For a person committed under subsection (2) of this section who has been remanded to a period of less restrictive treatment, in addition to the grounds specified in subsection (3) of this section, the designated mental health professional may file a new petition for continued less restrictive treatment if:

(a) The person was previously committed by a court to detention for involuntary mental health treatment during the thirty-six months that preceded the person's initial detention date during the current involuntary commitment cycle, excluding any time spent in a mental health facility or in confinement as a result of a criminal conviction;

(b) In view of the person's treatment history or current behavior, the person is unlikely to voluntarily participate in

outpatient treatment without an order for less restrictive treatment; and

(c) Outpatient treatment that would be provided under a less restrictive treatment order is necessary to prevent a relapse, decompensation, or deterioration that is likely to result in the person presenting a likelihood of serious harm or the person becoming gravely disabled within a reasonably short period of time.

(5) A new petition for involuntary treatment filed under subsection (3) or (4) of this section shall be filed and heard in the superior court of the county of the facility which is filing the new petition for involuntary treatment unless good cause is shown for a change of venue. The cost of the proceedings shall be borne by the state.

(6) The hearing shall be held as provided in RCW 71.05.310, and if the court or jury finds that the grounds for additional confinement as set forth in this section are present, the court may order the committed person returned for an additional period of treatment not to exceed one hundred eighty days from the date of judgment. At the end of the one hundred eighty day period of commitment, the committed person shall be released unless a petition for another one hundred eighty day period of continued treatment is filed and heard in the same manner as provided in this section. Successive one hundred eighty day commitments are permissible on the same grounds and pursuant to the same procedures as the original one hundred eighty day commitment. However, a commitment is not permissible under subsection (4) of this section if thirty-six months have passed since the last date of discharge from detention for inpatient treatment that preceded the current less restrictive alternative order, nor shall a commitment under subsection (4) of this section be permissible if the likelihood of serious harm in subsection (4)(c) of this section is based solely on harm to the property of others.

(7) No person committed as provided in this section may be detained unless a valid order of commitment is in effect. No order of commitment can exceed one hundred eighty days in length. [2009 c 323 § 2; 2008 c 213 § 9; 2006 c 333 § 304; 1999 c 13 § 7; 1997 c 112 § 26; 1989 c 420 § 15; 1986 c 67 § 5; 1979 ex.s. c 215 § 15; 1975 1st ex.s. c 199 § 9; 1974 ex.s. c 145 § 23; 1973 1st ex.s. c 142 § 37.]

Findings—Intent—2009 c 323: "(1) The legislature finds that many persons who are released from involuntary mental health treatment in an inpatient setting would benefit from an order for less restrictive treatment in order to provide the structure and support necessary to facilitate long-term stability and success in the community.

(2) The legislature intends to make it easier to renew orders for less restrictive treatment following a period of inpatient commitment in cases in which a person has been involuntarily committed more than once and is likely to benefit from a renewed order for less restrictive treatment.

(3) The legislature finds that public safety is enhanced when a designated mental health professional is able to file a petition to revoke an order for less restrictive treatment under RCW 71.05.340 before a person who is the subject of the petition becomes ill enough to present a likelihood of serious harm." [2009 c 323 § 1.]

Finding—Purpose—Intent—Severability—Part headings not law—Effective dates—2006 c 333: See notes following RCW 71.24.016.

Purpose—Construction—1999 c 13: See note following RCW 10.77.010.

71.05.340 Outpatient treatment or care—Conditional release—Procedures for revocation. (1)(a) When, in the opinion of the superintendent or the professional person in charge of the hospital or facility providing involuntary treatment, the committed person can be appropriately served by outpatient treatment prior to or at the expiration of the period of commitment, then such outpatient care may be required as a term of conditional release for a period which, when added to the inpatient treatment period, shall not exceed the period of commitment. If the hospital or facility designated to provide outpatient treatment is other than the facility providing involuntary treatment, the outpatient facility so designated must agree in writing to assume such responsibility. A copy of the terms of conditional release shall be given to the patient, the designated mental health professional in the county in which the patient is to receive outpatient treatment, and to the court of original commitment.

(b) Before a person committed under grounds set forth in RCW 71.05.280(3) or 71.05.320(3)(c) is conditionally released under (a) of this subsection, the superintendent or professional person in charge of the hospital or facility providing involuntary treatment shall in writing notify the prosecuting attorney of the county in which the criminal charges against the committed person were dismissed, of the decision to conditionally release the person. Notice and a copy of the terms of conditional release shall be provided at least thirty days before the person is released from inpatient care. Within twenty days after receiving notice, the prosecuting attorney may petition the court in the county that issued the commitment order to hold a hearing to determine whether the person may be conditionally released and the terms of the conditional release. The prosecuting attorney shall provide a copy of the petition to the superintendent or professional person in charge of the hospital or facility providing involuntary treatment, the attorney, if any, and guardian or conservator of the committed person, and the court of original commitment. If the county in which the committed person is to receive outpatient treatment is the same county in which the criminal charges against the committed person were dismissed, then the court shall, upon the motion of the prosecuting attorney, transfer the proceeding to the court in that county. The court shall conduct a hearing on the petition within ten days of the filing of the petition. The committed person shall have the same rights with respect to notice, hearing, and counsel as for an involuntary treatment proceeding, except as set forth in this subsection and except that there shall be no right to jury trial. The issue to be determined at the hearing is whether or not the person may be conditionally released without substantial danger to other persons, or substantial likelihood of committing criminal acts jeopardizing public safety or security. If the court disapproves of the conditional release, it may do so only on the basis of substantial evidence. Pursuant to the determination of the court upon the hearing, the conditional release of the person shall be approved by the court on the same or modified conditions or the person shall be returned for involuntary treatment on an inpatient basis subject to release at the end of the period for which he or she was committed, or otherwise in accordance with the provisions of this chapter.

(2) The hospital or facility designated to provide outpatient care or the secretary may modify the conditions for continued release when such modification is in the best interest

of the person. Notification of such changes shall be sent to all persons receiving a copy of the original conditions.

(3)(a) If the hospital or facility designated to provide outpatient care, the designated mental health professional, or the secretary determines that:

(i) A conditionally released person is failing to adhere to the terms and conditions of his or her release;

(ii) Substantial deterioration in a conditionally released person's functioning has occurred;

(iii) There is evidence of substantial decompensation with a reasonable probability that the decompensation can be reversed by further inpatient treatment; or

(iv) The person poses a likelihood of serious harm.

Upon notification by the hospital or facility designated to provide outpatient care, or on his or her own motion, the designated mental health professional or the secretary may order that the conditionally released person be apprehended and taken into custody and temporarily detained in an evaluation and treatment facility in or near the county in which he or she is receiving outpatient treatment.

(b) The hospital or facility designated to provide outpatient treatment shall notify the secretary or designated mental health professional when a conditionally released person fails to adhere to terms and conditions of his or her conditional release or experiences substantial deterioration in his or her condition and, as a result, presents an increased likelihood of serious harm. The designated mental health professional or secretary shall order the person apprehended and temporarily detained in an evaluation and treatment facility in or near the county in which he or she is receiving outpatient treatment.

(c) A person detained under this subsection (3) shall be held until such time, not exceeding five days, as a hearing can be scheduled to determine whether or not the person should be returned to the hospital or facility from which he or she had been conditionally released. The designated mental health professional or the secretary may modify or rescind such order at any time prior to commencement of the court hearing.

(d) The court that originally ordered commitment shall be notified within two judicial days of a person's detention under the provisions of this section, and the designated mental health professional or the secretary shall file his or her petition and order of apprehension and detention with the court that originally ordered commitment or with the court in the county in which the person is detained and serve them upon the person detained. His or her attorney, if any, and his or her guardian or conservator, if any, shall receive a copy of such papers as soon as possible. Such person shall have the same rights with respect to notice, hearing, and counsel as for an involuntary treatment proceeding, except as specifically set forth in this section and except that there shall be no right to jury trial. The venue for proceedings regarding a petition for modification or revocation of an order for conditional release shall be in the county in which the petition was filed. The issues to be determined shall be: (i) Whether the conditionally released person did or did not adhere to the terms and conditions of his or her conditional release; (ii) that substantial deterioration in the person's functioning has occurred; (iii) there is evidence of substantial decompensation with a reasonable probability that the decompensation can be reversed by further inpatient treatment; or (iv) there is a likelihood of serious harm; and, if any of the conditions listed in this subsection (3)(d) have occurred, whether the terms of conditional release should be modified or the person should be returned to the facility.

(e) Pursuant to the determination of the court upon such hearing, the conditionally released person shall either continue to be conditionally released on the same or modified conditions or shall be returned for involuntary treatment on an inpatient basis subject to release at the end of the period for which he or she was committed for involuntary treatment, or otherwise in accordance with the provisions of this chapter. Such hearing may be waived by the person and his or her counsel and his or her guardian or conservator, if any, but shall not be waivable unless all such persons agree to waive, and upon such waiver the person may be returned for involuntary treatment or continued on conditional release on the same or modified conditions.

(4) The proceedings set forth in subsection (3) of this section may be initiated by the designated mental health professional or the secretary on the same basis set forth therein without requiring or ordering the apprehension and detention of the conditionally released person, in which case the court hearing shall take place in not less than five days from the date of service of the petition upon the conditionally released person. The petition may be filed in the court that originally ordered commitment or with the court in the county in which the person is present. The venue for the proceedings regarding the petition for modification or revocation of an order for conditional release shall be in the county in which the petition was filed.

Upon expiration of the period of commitment, or when the person is released from outpatient care, notice in writing to the court which committed the person for treatment shall be provided.

(5) The grounds and procedures for revocation of less restrictive alternative treatment shall be the same as those set forth in this section for conditional releases.

(6) In the event of a revocation of a conditional release, the subsequent treatment period may be for no longer than the actual period authorized in the original court order. [2009 c 322 § 1; 2000 c 94 § 8; 1998 c 297 § 21; 1997 c 112 § 28; 1987 c 439 § 10; 1986 c 67 § 6; 1979 ex.s. c 215 § 16; 1974 ex.s. c 145 § 24; 1973 1st ex.s. c 142 § 39.]

Effective dates—Severability—Intent—1998 c 297: See notes following RCW 71.05.010.

71.05.360 Rights of involuntarily detained persons. (1)(a) Every person involuntarily detained or committed under the provisions of this chapter shall be entitled to all the rights set forth in this chapter, which shall be prominently posted in the facility, and shall retain all rights not denied him or her under this chapter except as chapter 9.41 RCW may limit the right of a person to purchase or possess a firearm or to qualify for a concealed pistol license.

(b) No person shall be presumed incompetent as a consequence of receiving an evaluation or voluntary or involuntary treatment for a mental disorder, under this chapter or any prior laws of this state dealing with mental illness. Competency shall not be determined or withdrawn except under the provisions of chapter 10.77 or 11.88 RCW.

(c) Any person who leaves a public or private agency following evaluation or treatment for mental disorder shall be given a written statement setting forth the substance of this section.

(2) Each person involuntarily detained or committed pursuant to this chapter shall have the right to adequate care and individualized treatment.

(3) The provisions of this chapter shall not be construed to deny to any person treatment by spiritual means through prayer in accordance with the tenets and practices of a church or religious denomination.

(4) Persons receiving evaluation or treatment under this chapter shall be given a reasonable choice of an available physician, psychiatric advanced registered nurse practitioner, or other professional person qualified to provide such services.

(5) Whenever any person is detained for evaluation and treatment pursuant to this chapter, both the person and, if possible, a responsible member of his or her immediate family, personal representative, guardian, or conservator, if any, shall be advised as soon as possible in writing or orally, by the officer or person taking him or her into custody or by personnel of the evaluation and treatment facility where the person is detained that unless the person is released or voluntarily admits himself or herself for treatment within seventy-two hours of the initial detention:

(a) A judicial hearing in a superior court, either by a judge or court commissioner thereof, shall be held not more than seventy-two hours after the initial detention to determine whether there is probable cause to detain the person after the seventy-two hours have expired for up to an additional fourteen days without further automatic hearing for the reason that the person is a person whose mental disorder presents a likelihood of serious harm or that the person is gravely disabled;

(b) The person has a right to communicate immediately with an attorney; has a right to have an attorney appointed to represent him or her before and at the probable cause hearing if he or she is indigent; and has the right to be told the name and address of the attorney that the mental health professional has designated pursuant to this chapter;

(c) The person has the right to remain silent and that any statement he or she makes may be used against him or her;

(d) The person has the right to present evidence and to cross-examine witnesses who testify against him or her at the probable cause hearing; and

(e) The person has the right to refuse psychiatric medications, including antipsychotic medication beginning twenty-four hours prior to the probable cause hearing.

(6) When proceedings are initiated under RCW 71.05.153, no later than twelve hours after such person is admitted to the evaluation and treatment facility the personnel of the evaluation and treatment facility or the designated mental health professional shall serve on such person a copy of the petition for initial detention and the name, business address, and phone number of the designated attorney and shall forthwith commence service of a copy of the petition for initial detention on the designated attorney.

(7) The judicial hearing described in subsection (5) of this section is hereby authorized, and shall be held according to the provisions of subsection (5) of this section and rules promulgated by the supreme court.

(8) At the probable cause hearing the detained person shall have the following rights in addition to the rights previously specified:

(a) To present evidence on his or her behalf;

(b) To cross-examine witnesses who testify against him or her;

(c) To be proceeded against by the rules of evidence;

(d) To remain silent;

(e) To view and copy all petitions and reports in the court file.

(9) Privileges between patients and physicians, psychologists, or psychiatric advanced registered nurse practitioners are deemed waived in proceedings under this chapter relating to the administration of antipsychotic medications. As to other proceedings under this chapter, the privileges shall be waived when a court of competent jurisdiction in its discretion determines that such waiver is necessary to protect either the detained person or the public.

The waiver of a privilege under this section is limited to records or testimony relevant to evaluation of the detained person for purposes of a proceeding under this chapter. Upon motion by the detained person or on its own motion, the court shall examine a record or testimony sought by a petitioner to determine whether it is within the scope of the waiver.

The record maker shall not be required to testify in order to introduce medical or psychological records of the detained person so long as the requirements of RCW 5.45.020 are met except that portions of the record which contain opinions as to the detained person's mental state must be deleted from such records unless the person making such conclusions is available for cross-examination.

(10) Insofar as danger to the person or others is not created, each person involuntarily detained, treated in a less restrictive alternative course of treatment, or committed for treatment and evaluation pursuant to this chapter shall have, in addition to other rights not specifically withheld by law, the following rights:

(a) To wear his or her own clothes and to keep and use his or her own personal possessions, except when deprivation of same is essential to protect the safety of the resident or other persons;

(b) To keep and be allowed to spend a reasonable sum of his or her own money for canteen expenses and small purchases;

(c) To have access to individual storage space for his or her private use;

(d) To have visitors at reasonable times;

(e) To have reasonable access to a telephone, both to make and receive confidential calls, consistent with an effective treatment program;

(f) To have ready access to letter writing materials, including stamps, and to send and receive uncensored correspondence through the mails;

(g) To discuss treatment plans and decisions with professional persons;

(h) Not to consent to the administration of antipsychotic medications and not to thereafter be administered antipsychotic medications unless ordered by a court under RCW

71.05.217 or pursuant to an administrative hearing under RCW 71.05.215;

(i) Not to consent to the performance of electroconvulsant therapy or surgery, except emergency life-saving surgery, unless ordered by a court under RCW 71.05.217;

(j) Not to have psychosurgery performed on him or her under any circumstances;

(k) To dispose of property and sign contracts unless such person has been adjudicated an incompetent in a court proceeding directed to that particular issue.

(11) Every person involuntarily detained shall immediately be informed of his or her right to a hearing to review the legality of his or her detention and of his or her right to counsel, by the professional person in charge of the facility providing evaluation and treatment, or his or her designee, and, when appropriate, by the court. If the person so elects, the court shall immediately appoint an attorney to assist him or her.

(12) A person challenging his or her detention or his or her attorney shall have the right to designate and have the court appoint a reasonably available independent physician, psychiatric advanced registered nurse practitioner, or licensed mental health professional to examine the person detained, the results of which examination may be used in the proceeding. The person shall, if he or she is financially able, bear the cost of such expert examination, otherwise such expert examination shall be at public expense.

(13) Nothing contained in this chapter shall prohibit the patient from petitioning by writ of habeas corpus for release.

(14) Nothing in this chapter shall prohibit a person committed on or prior to January 1, 1974, from exercising a right available to him or her at or prior to January 1, 1974, for obtaining release from confinement.

(15) Nothing in this section permits any person to knowingly violate a no-contact order or a condition of an active judgment and sentence or an active condition of supervision by the department of corrections. [2009 c 217 § 5; 2007 c 375 § 14; 2005 c 504 § 107; 1997 c 112 § 30; 1974 ex.s. c 145 § 25; 1973 1st ex.s. c 142 § 41.]

Findings—Purpose—Construction—Severability—2007 c 375: See notes following RCW 10.31.110.

Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504: See notes following RCW 71.05.027.

Alphabetization—Correction of references—2005 c 504: See note following RCW 71.05.020.

71.05.385 Information subject to disclosure to authorized persons—Restrictions. (1) A mental health service provider shall release to the persons authorized under subsection (2) of this section, upon request:

(a) The fact, place, and date of an involuntary commitment, the fact and date of discharge or release, and the last known address of a person who has been committed under this chapter.

(b) Information related to mental health services, in the format determined under subsection (9) of this section, concerning a person who:

(i) Is currently committed to the custody or supervision of the department of corrections or the indeterminate sentence review board under chapter 9.94A or 9.95 RCW;

(ii) Has been convicted or found not guilty by reason of insanity of a serious violent offense; or

(iii) Was charged with a serious violent offense and such charges were dismissed under RCW 10.77.086.

Legal counsel may release such information to the persons authorized under subsection (2) of this section on behalf of the mental health service provider, provided that nothing in this subsection shall require the disclosure of attorney work product or attorney-client privileged information.

(2) The information subject to release under subsection (1) of this section shall be released to law enforcement officers, personnel of a county or city jail, designated mental health professionals, public health officers, therapeutic court personnel, personnel of the department of corrections, or personnel of the indeterminate sentence review board, when such information is requested during the course of business and for the purpose of carrying out the responsibilities of the requesting person's office. No mental health service provider or person employed by a mental health service provider, or its legal counsel, shall be liable for information released to or used under the provisions of this section or rules adopted under this section except under RCW 71.05.440.

(3) A person who requests information under subsection (1)(b) of this section must comply with the following restrictions:

(a) Information must be requested only for the purposes permitted by this subsection and for the purpose of carrying out the responsibilities of the requesting person's office. Appropriate purposes for requesting information under this section include:

(i) Completing presentence investigations or risk assessment reports;

(ii) Assessing a person's risk to the community;

(iii) Assessing a person's risk of harm to self or others when confined in a city or county jail;

(iv) Planning for and provision of supervision of an offender, including decisions related to sanctions for violations of conditions of community supervision; and

(v) Responding to an offender's failure to report for department of corrections supervision.

(b) Information shall not be requested under this section unless the requesting person has reasonable suspicion that the individual who is the subject of the information:

(i) Has engaged in activity indicating that a crime or a violation of community custody or parole has been committed or, based upon his or her current or recent past behavior, is likely to be committed in the near future; or

(ii) Is exhibiting signs of a deterioration in mental functioning which may make the individual appropriate for civil commitment under this chapter.

(c) Any information received under this section shall be held confidential and subject to the limitations on disclosure outlined in this chapter, except:

(i) Such information may be shared with other persons who have the right to request similar information under subsection (2) of this section, solely for the purpose of coordinating activities related to the individual who is the subject of the information in a manner consistent with the official responsibilities of the persons involved;

(ii) Such information may be shared with a prosecuting attorney acting in an advisory capacity for a person who

receives information under this section. A prosecuting attorney under this subsection shall be subject to the same restrictions and confidentiality limitations as the person who requested the information; and

(iii) As provided in RCW 72.09.585.

(4) A request for information related to mental health services under this section shall not require the consent of the subject of the records. Such request shall be provided in writing, except to the extent authorized in subsection (5) of this section. A written request may include requests made by e-mail or facsimile so long as the requesting person is clearly identified. The request must specify the information being requested.

(5) In the event of an emergency situation that poses a significant risk to the public or the offender, a mental health service provider, or its legal counsel, shall release information related to mental health services delivered to the offender and, if known, information regarding where the offender is likely to be found to the department of corrections or law enforcement upon request. The initial request may be written or oral. All oral requests must be subsequently confirmed in writing. Information released in response to an oral request is limited to a statement as to whether the offender is or is not being treated by the mental health service provider and the address or information about the location or whereabouts of the offender.

(6) Disclosure under this section to state or local law enforcement authorities is mandatory for the purposes of the health insurance portability and accountability act.

(7) Whenever federal law or federal regulations restrict the release of information contained in the treatment records of any patient who receives treatment for alcoholism or drug dependency, the release of the information may be restricted as necessary to comply with federal law and regulations.

(8) This section does not modify the terms and conditions of disclosure of information related to sexually transmitted diseases under chapter 70.24 RCW.

(9) In collaboration with interested organizations, the department shall develop a standard form for requests for information related to mental health services made under this section and a standard format for information provided in response to such requests. Consistent with the goals of the health information privacy provisions of the federal health insurance portability and accountability act, in developing the standard form for responsive information, the department shall design the form in such a way that the information disclosed is limited to the minimum necessary to serve the purpose for which the information is requested. [2009 c 320 § 2.]

Conflict with federal requirements—2009 c 320: See note following RCW 71.05.020.

71.05.390 Confidential information and records—Disclosure. Except as provided in this section, RCW 71.05.445, 71.05.630, 70.96A.150, 71.05.385, or pursuant to a valid release under RCW 70.02.030, the fact of admission and all information and records compiled, obtained, or maintained in the course of providing services to either voluntary or involuntary recipients of services at public or private agencies shall be confidential.

Information and records may be disclosed only:

(1) In communications between qualified professional persons to meet the requirements of this chapter, in the provision of services or appropriate referrals, or in the course of guardianship proceedings. The consent of the person, or his or her personal representative or guardian, shall be obtained before information or records may be disclosed by a professional person employed by a facility unless provided to a professional person:

(a) Employed by the facility;

(b) Who has medical responsibility for the patient's care;

(c) Who is a designated mental health professional;

(d) Who is providing services under chapter 71.24 RCW;

(e) Who is employed by a state or local correctional facility where the person is confined or supervised; or

(f) Who is providing evaluation, treatment, or follow-up services under chapter 10.77 RCW.

(2) When the communications regard the special needs of a patient and the necessary circumstances giving rise to such needs and the disclosure is made by a facility providing services to the operator of a facility in which the patient resides or will reside.

(3)(a) When the person receiving services, or his or her guardian, designates persons to whom information or records may be released, or if the person is a minor, when his or her parents make such designation.

(b) A public or private agency shall release to a person's next of kin, attorney, personal representative, guardian, or conservator, if any:

(i) The information that the person is presently a patient in the facility or that the person is seriously physically ill;

(ii) A statement evaluating the mental and physical condition of the patient, and a statement of the probable duration of the patient's confinement, if such information is requested by the next of kin, attorney, personal representative, guardian, or conservator; and

(iii) Such other information requested by the next of kin or attorney as may be necessary to decide whether or not proceedings should be instituted to appoint a guardian or conservator.

(4) To the extent necessary for a recipient to make a claim, or for a claim to be made on behalf of a recipient for aid, insurance, or medical assistance to which he or she may be entitled.

(5)(a) For either program evaluation or research, or both: PROVIDED, That the secretary adopts rules for the conduct of the evaluation or research, or both. Such rules shall include, but need not be limited to, the requirement that all evaluators and researchers must sign an oath of confidentiality substantially as follows:

"As a condition of conducting evaluation or research concerning persons who have received services from (fill in the facility, agency, or person) I, ..., agree not to divulge, publish, or otherwise make known to unauthorized persons or the public any information obtained in the course of such evaluation or research regarding persons who have received services such that the person who received such services is identifiable.

I recognize that unauthorized release of confidential information may subject me to civil liability under the provisions of state law.

/s/ . . . . . ."

(b) Nothing in this chapter shall be construed to prohibit the compilation and publication of statistical data for use by government or researchers under standards, including standards to assure maintenance of confidentiality, set forth by the secretary.

(6)(a) To the courts as necessary to the administration of this chapter or to a court ordering an evaluation or treatment under chapter 10.77 RCW solely for the purpose of preventing the entry of any evaluation or treatment order that is inconsistent with any order entered under this chapter.

(b) To a court or its designee in which a motion under chapter 10.77 RCW has been made for involuntary medication of a defendant for the purpose of competency restoration.

(c) Disclosure under this subsection is mandatory for the purpose of the health insurance portability and accountability act.

(7)(a) When a mental health professional is requested by a representative of a law enforcement or corrections agency, including a police officer, sheriff, community corrections officer, a municipal attorney, or prosecuting attorney to undertake an investigation or provide treatment under RCW 71.05.150, 10.31.110, or 71.05.153, the mental health professional shall, if requested to do so, advise the representative in writing of the results of the investigation including a statement of reasons for the decision to detain or release the person investigated. Such written report shall be submitted within seventy-two hours of the completion of the investigation or the request from the law enforcement or corrections representative, whichever occurs later.

(b) Disclosure under this subsection is mandatory for the purposes of the health insurance portability and accountability act.

(8) To the attorney of the detained person.

(9) To the prosecuting attorney as necessary to carry out the responsibilities of the office under RCW 71.05.330(2) and 71.05.340(1)(b) and 71.05.335. The prosecutor shall be provided access to records regarding the committed person's treatment and prognosis, medication, behavior problems, and other records relevant to the issue of whether treatment less restrictive than inpatient treatment is in the best interest of the committed person or others. Information shall be disclosed only after giving notice to the committed person and the person's counsel.

(10)(a) To appropriate law enforcement agencies and to a person, when the identity of the person is known to the public or private agency, whose health and safety has been threatened, or who is known to have been repeatedly harassed, by the patient. The person may designate a representative to receive the disclosure. The disclosure shall be made by the professional person in charge of the public or private agency or his or her designee and shall include the dates of commitment, admission, discharge, or release, authorized or unauthorized absence from the agency's facility, and only such other information that is pertinent to the threat or harassment. The decision to disclose or not shall not result in civil liability for the agency or its employees so long as the decision was reached in good faith and without gross negligence.

(b) Disclosure under this subsection is mandatory for the purposes of the health insurance portability and accountability act.

(11)(a) To appropriate corrections and law enforcement agencies all necessary and relevant information in the event of a crisis or emergent situation that poses a significant and imminent risk to the public. The decision to disclose or not shall not result in civil liability for the mental health service provider or its employees so long as the decision was reached in good faith and without gross negligence.

(b) Disclosure under this subsection is mandatory for the purposes of the health insurance portability and accountability act.

(12) To the persons designated in RCW 71.05.425 and 71.05.385 for the purposes described in those sections.

(13) Civil liability and immunity for the release of information about a particular person who is committed to the department under RCW 71.05.280(3) and 71.05.320(3)(c) after dismissal of a sex offense as defined in RCW 9.94A.030, is governed by RCW 4.24.550.

(14) Upon the death of a person, his or her next of kin, personal representative, guardian, or conservator, if any, shall be notified.

Next of kin who are of legal age and competent shall be notified under this section in the following order: Spouse, parents, children, brothers and sisters, and other relatives according to the degree of relation. Access to all records and information compiled, obtained, or maintained in the course of providing services to a deceased patient shall be governed by RCW 70.02.140.

(15) To the department of health for the purposes of determining compliance with state or federal licensure, certification, or registration rules or laws. However, the information and records obtained under this subsection are exempt from public inspection and copying pursuant to chapter 42.56 RCW.

(16) To mark headstones or otherwise memorialize patients interred at state hospital cemeteries. The department of social and health services shall make available the name, date of birth, and date of death of patients buried in state hospital cemeteries fifty years after the death of a patient.

(17) To law enforcement officers and to prosecuting attorneys as are necessary to enforce RCW 9.41.040(2)(a)(ii). The extent of information that may be released is limited as follows:

(a) Only the fact, place, and date of involuntary commitment, an official copy of any order or orders of commitment, and an official copy of any written or oral notice of ineligibility to possess a firearm that was provided to the person pursuant to RCW 9.41.047(1), shall be disclosed upon request;

(b) The law enforcement and prosecuting attorneys may only release the information obtained to the person's attorney as required by court rule and to a jury or judge, if a jury is waived, that presides over any trial at which the person is charged with violating RCW 9.41.040(2)(a)(ii);

(c) Disclosure under this subsection is mandatory for the purposes of the health insurance portability and accountability act.

(18) When a patient would otherwise be subject to the provisions of this section and disclosure is necessary for the protection of the patient or others due to his or her unauthorized disappearance from the facility, and his or her whereabouts is unknown, notice of such disappearance, along with relevant information, may be made to relatives, the department of corrections when the person is under the supervision of the department, and governmental law enforcement agencies designated by the physician or psychiatric advanced registered nurse practitioner in charge of the patient or the professional person in charge of the facility, or his or her professional designee.

Except as otherwise provided in this chapter, the uniform health care information act, chapter 70.02 RCW, applies to all records and information compiled, obtained, or maintained in the course of providing services.

(19) The fact of admission, as well as all records, files, evidence, findings, or orders made, prepared, collected, or maintained pursuant to this chapter shall not be admissible as evidence in any legal proceeding outside this chapter without the written consent of the person who was the subject of the proceeding except as provided in RCW 71.05.385, in a subsequent criminal prosecution of a person committed pursuant to RCW 71.05.280(3) or 71.05.320(3)(c) on charges that were dismissed pursuant to chapter 10.77 RCW due to incompetency to stand trial, in a civil commitment proceeding pursuant to chapter 71.09 RCW, or, in the case of a minor, a guardianship or dependency proceeding. The records and files maintained in any court proceeding pursuant to this chapter shall be confidential and available subsequent to such proceedings only to the person who was the subject of the proceeding or his or her attorney. In addition, the court may order the subsequent release or use of such records or files only upon good cause shown if the court finds that appropriate safeguards for strict confidentiality are and will be maintained. [2009 c 320 § 3; 2009 c 217 § 6; 2007 c 375 § 15. Prior: 2005 c 504 § 109; 2005 c 453 § 5; 2005 c 274 § 346; prior: 2004 c 166 § 6; 2004 c 157 § 5; 2004 c 33 § 2; prior: 2000 c 94 § 9; 2000 c 75 § 6; 2000 c 74 § 7; 1999 c 12 § 1; 1998 c 297 § 22; 1993 c 448 § 6; 1990 c 3 § 112; 1986 c 67 § 8; 1985 c 207 § 1; 1983 c 196 § 4; 1979 ex.s. c 215 § 17; 1975 1st ex.s. c 199 § 10; 1974 ex.s. c 145 § 27; 1973 1st ex.s. c 142 § 44.]

Reviser's note: This section was amended by 2009 c 217 § 6 and by 2009 c 320 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Conflict with federal requirements—2009 c 320: See note following RCW 71.05.020.

Findings—Purpose—Construction—Severability—2007 c 375: See notes following RCW 10.31.110.

Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504: See notes following RCW 71.05.027.

Alphabetization—Correction of references—2005 c 504: See note following RCW 71.05.020.

Severability—2005 c 453: See note following RCW 9.41.040.

Part headings not law—Effective date—2005 c 274: See RCW 42.56.901 and 42.56.902.

Severability—Effective dates—2004 c 166: See notes following RCW 71.05.040.

Findings—Intent—Severability—Effective date—2004 c 157: See notes following RCW 10.77.010.

Finding—Intent—2004 c 33: "The legislature finds that social stigmas surrounding mental illness have prevented patients buried in the state hospital cemeteries from being properly memorialized. From 1887 to 1953, the state buried many of the patients who died while in residence at the three state hospitals on hospital grounds. In order to honor these patients, the legislature intends that the state be allowed to release records necessary to appropriately mark their resting place." [2004 c 33 § 1.]

Intent—2000 c 75: See note following RCW 71.05.445.

Severability—2000 c 74: See note following RCW 10.77.060.

Effective dates—Severability—Intent—1998 c 297: See notes following RCW 71.05.010.

Effective date—1993 c 448: See note following RCW 70.02.010.

Index, part headings not law—Severability—Effective dates—Application—1990 c 3: See RCW 18.155.900 through 18.155.902.

71.05.420 Records of disclosure. Except as provided in RCW 71.05.425, when any disclosure of information or records is made as authorized by RCW 71.05.390, the physician or psychiatric advanced registered nurse practitioner in charge of the patient or the professional person in charge of the facility shall promptly cause to be entered into the patient's medical record the date and circumstances under which said disclosure was made, the names and relationships to the patient, if any, of the persons or agencies to whom such disclosure was made, and the information disclosed. [2009 c 217 § 7; 2005 c 504 § 110; 1990 c 3 § 113; 1973 1st ex.s. c 142 § 47.]

Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504: See notes following RCW 71.05.027.

Alphabetization—Correction of references—2005 c 504: See note following RCW 71.05.020.

Index, part headings not law—Severability—Effective dates—Application—1990 c 3: See RCW 18.155.900 through 18.155.902.

71.05.425 Persons committed following dismissal of sex, violent, or felony harassment offense—Notification of conditional release, final release, leave, transfer, or escape—To whom given—Definitions. ***(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*** (1)(a) Except as provided in subsection (2) of this section, at the earliest possible date, and in no event later than thirty days before conditional release, final release, authorized leave under RCW 71.05.325(2), or transfer to a facility other than a state mental hospital, the superintendent shall send written notice of conditional release, release, authorized leave, or transfer of a person committed under RCW 71.05.280(3) or 71.05.320(3)(c) following dismissal of a sex, violent, or felony harassment offense pursuant to RCW 10.77.086(4) to the following:

(i) The chief of police of the city, if any, in which the person will reside; and

(ii) The sheriff of the county in which the person will reside.

(b) The same notice as required by (a) of this subsection shall be sent to the following, if such notice has been requested in writing about a specific person committed under RCW 71.05.280(3) or 71.05.320(3)(c) following dismissal of a sex, violent, or felony harassment offense pursuant to RCW 10.77.086(4):

(i) The victim of the sex, violent, or felony harassment offense that was dismissed pursuant to RCW 10.77.086(4) preceding commitment under RCW 71.05.280(3) or 71.05.320(3)(c) or the victim's next of kin if the crime was a homicide;

(ii) Any witnesses who testified against the person in any court proceedings; and

(iii) Any person specified in writing by the prosecuting attorney.

Information regarding victims, next of kin, or witnesses requesting the notice, information regarding any other person specified in writing by the prosecuting attorney to receive the notice, and the notice are confidential and shall not be available to the person committed under this chapter.

(c) The thirty-day notice requirements contained in this subsection shall not apply to emergency medical transfers.

(d) The existence of the notice requirements in this subsection will not require any extension of the release date in the event the release plan changes after notification.

(2) If a person committed under RCW 71.05.280(3) or 71.05.320(3)(c) following dismissal of a sex, violent, or felony harassment offense pursuant to RCW 10.77.086(4) escapes, the superintendent shall immediately notify, by the most reasonable and expedient means available, the chief of police of the city and the sheriff of the county in which the person resided immediately before the person's arrest. If previously requested, the superintendent shall also notify the witnesses and the victim of the sex, violent, or felony harassment offense that was dismissed pursuant to RCW 10.77.086(4) preceding commitment under RCW 71.05.280(3) or 71.05.320(3) or the victim's next of kin if the crime was a homicide. In addition, the secretary shall also notify appropriate parties pursuant to RCW 71.05.390(18). If the person is recaptured, the superintendent shall send notice to the persons designated in this subsection as soon as possible but in no event later than two working days after the department learns of such recapture.

(3) If the victim, the victim's next of kin, or any witness is under the age of sixteen, the notice required by this section shall be sent to the parent or legal guardian of the child.

(4) The superintendent shall send the notices required by this chapter to the last address provided to the department by the requesting party. The requesting party shall furnish the department with a current address.

(5) For purposes of this section the following terms have the following meanings:

(a) "Violent offense" means a violent offense under RCW 9.94A.030;

(b) "Sex offense" means a sex offense under RCW 9.94A.030;

(c) "Next of kin" means a person's spouse, state registered domestic partner, parents, siblings, and children;

(d) "Felony harassment offense" means a crime of harassment as defined in RCW 9A.46.060 that is a felony. [2009 c 521 § 158; 2008 c 213 § 10; 2005 c 504 § 710; 2000 c 94 § 10; 1999 c 13 § 8; 1994 c 129 § 9; 1992 c 186 § 9; 1990 c 3 § 109.]

Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504: See notes following RCW 71.05.027.

Alphabetization—Correction of references—2005 c 504: See note following RCW 71.05.020.

Purpose—Construction—1999 c 13: See note following RCW 10.77.010.

Findings—Intent—1994 c 129: See note following RCW 4.24.550.

Severability—1992 c 186: See note following RCW 9A.46.110.

Index, part headings not law—Severability—Effective dates—Application—1990 c 3: See RCW 18.155.900 through 18.155.902.

71.05.445 Court-ordered mental health treatment of persons subject to department of corrections supervision—Initial assessment inquiry—Required notifications—Rules. (1)(a) When a mental health service provider conducts its initial assessment for a person receiving court-ordered treatment, the service provider shall inquire and shall be told by the offender whether he or she is subject to supervision by the department of corrections.

(b) When a person receiving court-ordered treatment or treatment ordered by the department of corrections discloses to his or her mental health service provider that he or she is subject to supervision by the department of corrections, the mental health service provider shall notify the department of corrections that he or she is treating the offender and shall notify the offender that his or her community corrections officer will be notified of the treatment, provided that if the offender has received relief from disclosure pursuant to RCW 9.94A.562, 70.96A.155, or 71.05.132 and the offender has provided the mental health service provider with a copy of the order granting relief from disclosure pursuant to RCW 9.94A.562, 70.96A.155, or 71.05.132, the mental health service provider is not required to notify the department of corrections that the mental health service provider is treating the offender. The notification may be written or oral and shall not require the consent of the offender. If an oral notification is made, it must be confirmed by a written notification. For purposes of this section, a written notification includes notification by e-mail or facsimile, so long as the notifying mental health service provider is clearly identified.

(2) The information to be released to the department of corrections shall include all relevant records and reports, as defined by rule, necessary for the department of corrections to carry out its duties.

(3) The department and the department of corrections, in consultation with regional support networks, mental health service providers as defined in RCW 71.05.020, mental health consumers, and advocates for persons with mental illness, shall adopt rules to implement the provisions of this section related to the type and scope of information to be released. These rules shall:

(a) Enhance and facilitate the ability of the department of corrections to carry out its responsibility of planning and ensuring community protection with respect to persons subject to sentencing under chapter 9.94A or 9.95 RCW, including accessing and releasing or disclosing information of persons who received mental health services as a minor; and

(b) Establish requirements for the notification of persons under the supervision of the department of corrections regarding the provisions of this section.

(4) The information received by the department of corrections under this section shall remain confidential and sub-

ject to the limitations on disclosure outlined in chapter 71.05 RCW, except as provided in RCW 72.09.585.

(5) No mental health service provider or individual employed by a mental health service provider shall be held responsible for information released to or used by the department of corrections under the provisions of this section or rules adopted under this section except under RCW 71.05.440.

(6) Whenever federal law or federal regulations restrict the release of information contained in the treatment records of any patient who receives treatment for alcoholism or drug dependency, the release of the information may be restricted as necessary to comply with federal law and regulations.

(7) This section does not modify the terms and conditions of disclosure of information related to sexually transmitted diseases under chapter 70.24 RCW.

(8) The department shall, subject to available resources, electronically, or by the most cost-effective means available, provide the department of corrections with the names, last dates of services, and addresses of specific regional support networks and mental health service providers that delivered mental health services to a person subject to chapter 9.94A or 9.95 RCW pursuant to an agreement between the departments. [2009 c 320 § 4; 2005 c 504 § 711; 2004 c 166 § 4; 2002 c 39 § 2; 2000 c 75 § 3.]

Conflict with federal requirements—2009 c 320: See note following RCW 71.05.020.

Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504: See notes following RCW 71.05.027.

Alphabetization—Correction of references—2005 c 504: See note following RCW 71.05.020.

Severability—Effective dates—2004 c 166: See notes following RCW 71.05.040.

Intent—2000 c 75: "It is the intent of the legislature to enhance and facilitate the ability of the department of corrections to carry out its responsibility of planning and ensuring community protection with respect to persons subject to sentencing under chapter 9.94A RCW by authorizing access to, and release or disclosure of, necessary information related to mental health services. This includes accessing and releasing or disclosing information of persons who received mental health services as a minor. The legislature does not intend this act to readdress access to information and records regarding continuity of care.

The legislature recognizes that persons with mental illness have a right to the confidentiality of information related to mental health services, including the fact of their receiving such services, unless there is a state interest that supersedes this right. It is the intent of the legislature to balance that right of the individual with the state interest to enhance public safety." [2000 c 75 § 1.]

71.05.630 Treatment records—Confidential—Release *(as amended by 2009 c 217).* (1) Except as otherwise provided by law, all treatment records shall remain confidential and may be released only to the persons designated in this section, or to other persons designated in an informed written consent of the patient.

(2) Treatment records of a person may be released without informed written consent in the following circumstances:

(a) To a person, organization, or agency as necessary for management or financial audits, or program monitoring and evaluation. Information obtained under this subsection shall remain confidential and may not be used in a manner that discloses the name or other identifying information about the person whose records are being released.

(b) To the department, the director of regional support networks, or a qualified staff member designated by the director only when necessary to be used for billing or collection purposes. The information shall remain confidential.

(c) For purposes of research as permitted in chapter 42.48 RCW.

(d) Pursuant to lawful order of a court.

(e) To qualified staff members of the department, to the director of regional support networks, to resource management services responsible for serving a patient, or to service providers designated by resource management services as necessary to determine the progress and adequacy of treatment and to determine whether the person should be transferred to a less restrictive or more appropriate treatment modality or facility. The information shall remain confidential.

(f) Within the treatment facility where the patient is receiving treatment, confidential information may be disclosed to persons employed, serving in bona fide training programs, or participating in supervised volunteer programs, at the facility when it is necessary to perform their duties.

(g) Within the department as necessary to coordinate treatment for mental illness, developmental disabilities, alcoholism, or drug abuse of persons who are under the supervision of the department.

(h) To a licensed physician or psychiatric advanced registered nurse practitioner who has determined that the life or health of the person is in danger and that treatment without the information contained in the treatment records could be injurious to the patient's health. Disclosure shall be limited to the portions of the records necessary to meet the medical emergency.

(i) To a facility that is to receive a person who is involuntarily committed under chapter 71.05 RCW, or upon transfer of the person from one treatment facility to another. The release of records under this subsection shall be limited to the treatment records required by law, a record or summary of all somatic treatments, and a discharge summary. The discharge summary may include a statement of the patient's problem, the treatment goals, the type of treatment which has been provided, and recommendation for future treatment, but may not include the patient's complete treatment record.

(j) Notwithstanding the provisions of RCW 71.05.390(7), to a correctional facility or a corrections officer who is responsible for the supervision of a person who is receiving inpatient or outpatient evaluation or treatment. Except as provided in RCW 71.05.445 and 71.34.345, release of records under this section is limited to:

(i) An evaluation report provided pursuant to a written supervision plan.

(ii) The discharge summary, including a record or summary of all somatic treatments, at the termination of any treatment provided as part of the supervision plan.

(iii) When a person is returned from a treatment facility to a correctional facility, the information provided under (j)(iv) of this subsection.

(iv) Any information necessary to establish or implement changes in the person's treatment plan or the level or kind of supervision as determined by resource management services. In cases involving a person transferred back to a correctional facility, disclosure shall be made to clinical staff only.

(k) To the person's counsel or guardian ad litem, without modification, at any time in order to prepare for involuntary commitment or recommitment proceedings, reexaminations, appeals, or other actions relating to detention, admission, commitment, or patient's rights under chapter 71.05 RCW.

(l) To staff members of the protection and advocacy agency or to staff members of a private, nonprofit corporation for the purpose of protecting and advocating the rights of persons with mental disorders or developmental disabilities. Resource management services may limit the release of information to the name, birthdate, and county of residence of the patient, information regarding whether the patient was voluntarily admitted, or involuntarily committed, the date and place of admission, placement, or commitment, the name and address of a guardian of the patient, and the date and place of the guardian's appointment. Any staff member who wishes to obtain additional information shall notify the patient's resource management services in writing of the request and of the resource management services' right to object. The staff member shall send the notice by mail to the guardian's address. If the guardian does not object in writing within fifteen days after the notice is mailed, the staff member may obtain the additional information. If the guardian objects in writing within fifteen days after the notice is mailed, the staff member may not obtain the additional information.

(m) For purposes of coordinating health care, the department may release without informed written consent of the patient, information acquired for billing and collection purposes as described in (b) of this subsection to all current treating providers of the patient with prescriptive authority who have written a prescription for the patient within the last twelve months. The department shall notify the patient that billing and collection information has been released to named providers, and provide the substance of the information released and the dates of such release. The department shall not release counseling, inpatient psychiatric hospitalization, or drug and alcohol treatment information without a signed written release from the client.

(3) Whenever federal law or federal regulations restrict the release of information contained in the treatment records of any patient who receives

treatment for chemical dependency, the department may restrict the release of the information as necessary to comply with federal law and regulations. [2009 c 217 § 8; 2007 c 191 § 1; 2005 c 504 § 112; 2000 c 75 § 5; 1989 c 205 § 13.]

71.05.630 Treatment records—Confidential—Release *(as amended by 2009 c 320).* (1) Except as otherwise provided by law, all treatment records shall remain confidential and may be released only to the persons designated in this section, or to other persons designated in an informed written consent of the patient.

(2) Treatment records of a person may be released without informed written consent in the following circumstances:

(a) To a person, organization, or agency as necessary for management or financial audits, or program monitoring and evaluation. Information obtained under this subsection shall remain confidential and may not be used in a manner that discloses the name or other identifying information about the person whose records are being released.

(b) To the department, the director of regional support networks, or a qualified staff member designated by the director only when necessary to be used for billing or collection purposes. The information shall remain confidential.

(c) For purposes of research as permitted in chapter 42.48 RCW.

(d) Pursuant to lawful order of a court.

(e) To qualified staff members of the department, to the director of regional support networks, to resource management services responsible for serving a patient, or to service providers designated by resource management services as necessary to determine the progress and adequacy of treatment and to determine whether the person should be transferred to a less restrictive or more appropriate treatment modality or facility. The information shall remain confidential.

(f) Within the treatment facility where the patient is receiving treatment, confidential information may be disclosed to persons employed, serving in bona fide training programs, or participating in supervised volunteer programs, at the facility when it is necessary to perform their duties.

(g) Within the department as necessary to coordinate treatment for mental illness, developmental disabilities, alcoholism, or drug abuse of persons who are under the supervision of the department.

(h) To a licensed physician who has determined that the life or health of the person is in danger and that treatment without the information contained in the treatment records could be injurious to the patient's health. Disclosure shall be limited to the portions of the records necessary to meet the medical emergency.

(i) To a facility that is to receive a person who is involuntarily committed under chapter 71.05 RCW, or upon transfer of the person from one treatment facility to another. The release of records under this subsection shall be limited to the treatment records required by law, a record or summary of all somatic treatments, and a discharge summary. The discharge summary may include a statement of the patient's problem, the treatment goals, the type of treatment which has been provided, and recommendation for future treatment, but may not include the patient's complete treatment record.

(j) ((~~Notwithstanding the provisions of RCW 71.05.390(7), to a correctional facility or a corrections officer who is responsible for the supervision of a person who is receiving inpatient or outpatient evaluation or treatment. Except as provided in RCW 71.05.445 and 71.34.345, release of records under this section is limited to:~~

~~(i) An evaluation report provided pursuant to a written supervision plan.~~

~~(ii) The discharge summary, including a record or summary of all somatic treatments, at the termination of any treatment provided as part of the supervision plan.~~

~~(iii) When a person is returned from a treatment facility to a correctional facility, the information provided under (j)(iv) of this subsection.~~

~~(iv) Any information necessary to establish or implement changes in the person's treatment plan or the level or kind of supervision as determined by resource management services. In cases involving a person transferred back to a correctional facility, disclosure shall be made to clinical staff only.~~

~~(k)~~)) To the person's counsel or guardian ad litem, without modification, at any time in order to prepare for involuntary commitment or recommitment proceedings, reexaminations, appeals, or other actions relating to detention, admission, commitment, or patient's rights under chapter 71.05 RCW.

(((~~l~~))) (k) To staff members of the protection and advocacy agency or to staff members of a private, nonprofit corporation for the purpose of protecting and advocating the rights of persons with mental disorders or developmental disabilities. Resource management services may limit the release of information to the name, birthdate, and county of residence of the patient, information regarding whether the patient was voluntarily admitted, or involuntarily committed, the date and place of admission, placement, or commitment, the name and address of a guardian of the patient, and the date and place of the guardian's appointment. Any staff member who wishes to obtain additional information shall notify the patient's resource management services in writing of the request and of the resource management services' right to object. The staff member shall send the notice by mail to the guardian's address. If the guardian does not object in writing within fifteen days after the notice is mailed, the staff member may obtain the additional information. If the guardian objects in writing within fifteen days after the notice is mailed, the staff member may not obtain the additional information.

(((~~m~~))) (l) For purposes of coordinating health care, the department may release without informed written consent of the patient, information acquired for billing and collection purposes as described in (b) of this subsection to all current treating providers of the patient with prescriptive authority who have written a prescription for the patient within the last twelve months. The department shall notify the patient that billing and collection information has been released to named providers, and provide the substance of the information released and the dates of such release. The department shall not release counseling, inpatient psychiatric hospitalization, or drug and alcohol treatment information without a signed written release from the client.

(3) Whenever federal law or federal regulations restrict the release of information contained in the treatment records of any patient who receives treatment for chemical dependency, the department may restrict the release of the information as necessary to comply with federal law and regulations. [2009 c 320 § 5; 2007 c 191 § 1; 2005 c 504 § 112; 2000 c 75 § 5; 1989 c 205 § 13.]

Conflict with federal requirements—2009 c 320: See note following RCW 71.05.020.

71.05.630 Treatment records—Confidential—Release *(as amended by 2009 c 398).* (1) Except as otherwise provided by law, all treatment records shall remain confidential and may be released only to the persons designated in this section, or to other persons designated in an informed written consent of the patient.

(2) Treatment records of a person may be released without informed written consent in the following circumstances:

(a) To a person, organization, or agency as necessary for management or financial audits, or program monitoring and evaluation. Information obtained under this subsection shall remain confidential and may not be used in a manner that discloses the name or other identifying information about the person whose records are being released.

(b) To the department, the director of regional support networks, or a qualified staff member designated by the director only when necessary to be used for billing or collection purposes. The information shall remain confidential.

(c) For purposes of research as permitted in chapter 42.48 RCW.

(d) Pursuant to lawful order of a court.

(e) To qualified staff members of the department, to the director of regional support networks, to resource management services responsible for serving a patient, or to service providers designated by resource management services as necessary to determine the progress and adequacy of treatment and to determine whether the person should be transferred to a less restrictive or more appropriate treatment modality or facility. The information shall remain confidential.

(f) Within the treatment facility where the patient is receiving treatment, confidential information may be disclosed to persons employed, serving in bona fide training programs, or participating in supervised volunteer programs, at the facility when it is necessary to perform their duties.

(g) Within the department as necessary to coordinate treatment for mental illness, developmental disabilities, alcoholism, or drug abuse of persons who are under the supervision of the department.

(h) To a licensed physician who has determined that the life or health of the person is in danger and that treatment without the information contained in the treatment records could be injurious to the patient's health. Disclosure shall be limited to the portions of the records necessary to meet the medical emergency.

(i) Consistent with the requirements of the health information portability and accountability act, to a licensed mental health professional, as defined in RCW 71.05.020, or a health care professional licensed under chapter 18.71, 18.71A, 18.57, 18.57A, 18.79, or 18.36A RCW who is providing care to a person, or to whom a person has been referred for evaluation or treatment, to assure coordinated care and treatment of that person. Psychother-

apy notes, as defined in 45 C.F.R. Sec. 164.501, may not be released without authorization of the person who is the subject of the request for release of information.

(j) To administrative and office support staff designated to obtain medical records for those licensed professionals listed in (i) of this subsection.

(k) To a facility that is to receive a person who is involuntarily committed under chapter 71.05 RCW, or upon transfer of the person from one treatment facility to another. The release of records under this subsection shall be limited to the treatment records required by law, a record or summary of all somatic treatments, and a discharge summary. The discharge summary may include a statement of the patient's problem, the treatment goals, the type of treatment which has been provided, and recommendation for future treatment, but may not include the patient's complete treatment record.

((~~(j)~~)) (l) Notwithstanding the provisions of RCW 71.05.390(7), to a correctional facility or a corrections officer who is responsible for the supervision of a person who is receiving inpatient or outpatient evaluation or treatment. Except as provided in RCW 71.05.445 and 71.34.345, release of records under this section is limited to:

(i) An evaluation report provided pursuant to a written supervision plan.

(ii) The discharge summary, including a record or summary of all somatic treatments, at the termination of any treatment provided as part of the supervision plan.

(iii) When a person is returned from a treatment facility to a correctional facility, the information provided under ((~~(j)~~)) (l)(iv) of this subsection.

(iv) Any information necessary to establish or implement changes in the person's treatment plan or the level or kind of supervision as determined by resource management services. In cases involving a person transferred back to a correctional facility, disclosure shall be made to clinical staff only.

((~~(k)~~)) (m) To the person's counsel or guardian ad litem, without modification, at any time in order to prepare for involuntary commitment or recommitment proceedings, reexaminations, appeals, or other actions relating to detention, admission, commitment, or patient's rights under chapter 71.05 RCW.

((~~(l)~~)) (n) To staff members of the protection and advocacy agency or to staff members of a private, nonprofit corporation for the purpose of protecting and advocating the rights of persons with mental disorders or developmental disabilities. Resource management services may limit the release of information to the name, birthdate, and county of residence of the patient, information regarding whether the patient was voluntarily admitted, or involuntarily committed, the date and place of admission, placement, or commitment, the name and address of a guardian of the patient, and the date and place of the guardian's appointment. Any staff member who wishes to obtain additional information shall notify the patient's resource management services in writing of the request and of the resource management services' right to object. The staff member shall send the notice by mail to the guardian's address. If the guardian does not object in writing within fifteen days after the notice is mailed, the staff member may obtain the additional information. If the guardian objects in writing within fifteen days after the notice is mailed, the staff member may not obtain the additional information.

((~~(m)~~)) (o) For purposes of coordinating health care, the department may release without informed written consent of the patient, information acquired for billing and collection purposes as described in (b) of this subsection to all current treating providers of the patient with prescriptive authority who have written a prescription for the patient within the last twelve months. The department shall notify the patient that billing and collection information has been released to named providers, and provide the substance of the information released and the dates of such release. The department shall not release counseling, inpatient psychiatric hospitalization, or drug and alcohol treatment information without a signed written release from the client.

(3) Whenever federal law or federal regulations restrict the release of information contained in the treatment records of any patient who receives treatment for chemical dependency, the department may restrict the release of the information as necessary to comply with federal law and regulations. [2009 c 398 § 1; 2007 c 191 § 1; 2005 c 504 § 112; 2000 c 75 § 5; 1989 c 205 § 13.]

Reviser's note: RCW 71.05.630 was amended three times during the 2009 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504: See notes following RCW 71.05.027.

Alphabetization—Correction of references—2005 c 504: See note following RCW 71.05.020.

Intent—2000 c 75: See note following RCW 71.05.445.

Contingent effective date—1989 c 205 §§ 11-19: See note following RCW 71.05.620.

71.05.660 Treatment records—Privileged communications unaffected. Nothing in this chapter or chapter 70.96A, 71.05, 71.34, or 70.96B RCW shall be construed to interfere with communications between physicians, psychiatric advanced registered nurse practitioners, or psychologists and patients and attorneys and clients. [2009 c 217 § 9; 2005 c 504 § 114; 1989 c 205 § 16.]

Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504: See notes following RCW 71.05.027.

Alphabetization—Correction of references—2005 c 504: See note following RCW 71.05.020.

Contingent effective date—1989 c 205 §§ 11-19: See note following RCW 71.05.620.

71.05.801 Persons with developmental disabilities—Service plans—Habilitation services. When appropriate and subject to available funds, the treatment and training of a person with a developmental disability who is committed to the custody of the department or to a facility certified for ninety day treatment by the department for a further period of intensive treatment under RCW 71.05.320 must be provided in a program specifically reserved for the treatment and training of persons with developmental disabilities. A person so committed shall receive habilitation services pursuant to an individualized service plan specifically developed to treat the behavior which was the subject of the criminal proceedings. The treatment program shall be administered by developmental disabilities professionals and others trained specifically in the needs of persons with developmental disabilities. The department may limit admissions to this specialized program in order to ensure that expenditures for services do not exceed amounts appropriated by the legislature and allocated by the department for such services. The department may establish admission priorities in the event that the number of eligible persons exceeds the limits set by the department. [2009 c 323 § 3.]

Findings—Intent—2009 c 323: See note following RCW 71.05.320.

71.05.950 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. ***(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to

individuals in state registered domestic partnerships. [2009 c 521 § 157.]

Chapter 71.06 RCW
SEXUAL PSYCHOPATHS

Sections

71.06.040 Preliminary hearing—Evidence—Detention in hospital for observation.

71.06.040 Preliminary hearing—Evidence—Detention in hospital for observation. At a preliminary hearing upon the charge of sexual psychopathy, the court may require the testimony of two duly licensed physicians or psychiatric advanced registered nurse practitioners who have examined the defendant. If the court finds that there are reasonable grounds to believe the defendant is a sexual psychopath, the court shall order said defendant confined at the nearest state hospital for observation as to the existence of sexual psychopathy. Such observation shall be for a period of not to exceed ninety days. The defendant shall be detained in the county jail or other county facilities pending execution of such observation order by the department. [2009 c 217 § 10; 1959 c 25 § 71.06.040. Prior: 1951 c 223 § 5.]

Chapter 71.09 RCW
SEXUALLY VIOLENT PREDATORS

Sections

71.09.020 Definitions.
71.09.025 Notice to prosecuting attorney prior to release.
71.09.030 Sexually violent predator petition—Filing.
71.09.040 Sexually violent predator petition—Probable cause hearing—Judicial determination—Transfer for evaluation.
71.09.050 Trial—Rights of parties.
71.09.060 Trial—Determination—Commitment procedures.
71.09.080 Rights of persons committed under this chapter.
71.09.090 Petition for conditional release to less restrictive alternative or unconditional discharge—Procedures.
71.09.092 Conditional release to less restrictive alternative—Findings.
71.09.096 Conditional release to less restrictive alternative—Judgment—Conditions—Annual review.
71.09.098 Revoking or modifying terms of conditional release to less restrictive alternative—Hearing—Custody pending hearing on revocation or modification.
71.09.111 Department of social and health services—Disclosures to the prosecuting agency.
71.09.112 Department of social and health services—Jurisdiction and revocation of conditional release after criminal conviction—Exception.
71.09.350 Examination and treatment only by certified providers—Exceptions.
71.09.903 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. *(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*

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

(1) "Department" means the department of social and health services.

(2) "Health care facility" means any hospital, hospice care center, licensed or certified health care facility, health maintenance organization regulated under chapter 48.46 RCW, federally qualified health maintenance organization, federally approved renal dialysis center or facility, or federally approved blood bank.

(3) "Health care practitioner" means an individual or firm licensed or certified to engage actively in a regulated health profession.

(4) "Health care services" means those services provided by health professionals licensed pursuant to RCW 18.120.020(4).

(5) "Health profession" means those licensed or regulated professions set forth in RCW 18.120.020(4).

(6) "Less restrictive alternative" means court-ordered treatment in a setting less restrictive than total confinement which satisfies the conditions set forth in RCW 71.09.092. A less restrictive alternative may not include placement in the community protection program as pursuant to RCW 71A.12.230.

(7) "Likely to engage in predatory acts of sexual violence if not confined in a secure facility" means that the person more probably than not will engage in such acts if released unconditionally from detention on the sexually violent predator petition. Such likelihood must be evidenced by a recent overt act if the person is not totally confined at the time the petition is filed under RCW 71.09.030.

(8) "Mental abnormality" means a congenital or acquired condition affecting the emotional or volitional capacity which predisposes the person to the commission of criminal sexual acts in a degree constituting such person a menace to the health and safety of others.

(9) "Personality disorder" means an enduring pattern of inner experience and behavior that deviates markedly from the expectations of the individual's culture, is pervasive and inflexible, has onset in adolescence or early adulthood, is stable over time and leads to distress or impairment. Purported evidence of a personality disorder must be supported by testimony of a licensed forensic psychologist or psychiatrist.

(10) "Predatory" means acts directed towards: (a) Strangers; (b) individuals with whom a relationship has been established or promoted for the primary purpose of victimization; or (c) persons of casual acquaintance with whom no substantial personal relationship exists.

(11) "Prosecuting agency" means the prosecuting attorney of the county where the person was convicted or charged or the attorney general if requested by the prosecuting attorney, as provided in RCW 71.09.030.

(12) "Recent overt act" means any act, threat, or combination thereof that has either caused harm of a sexually violent nature or creates a reasonable apprehension of such harm in the mind of an objective person who knows of the history and mental condition of the person engaging in the act or behaviors.

(13) "Risk potential activity" or "risk potential facility" means an activity or facility that provides a higher incidence of risk to the public from persons conditionally released from the special commitment center. Risk potential activities and facilities include: Public and private schools, school bus stops, licensed day care and licensed preschool facilities, public parks, publicly dedicated trails, sports fields, playgrounds, recreational and community centers, churches, synagogues, temples, mosques, public libraries, public and private youth camps, and others identified by the department following the hearings on a potential site required in RCW

71.09.315. For purposes of this chapter, "school bus stops" does not include bus stops established primarily for public transit.

(14) "Secretary" means the secretary of social and health services or the secretary's designee.

(15) "Secure facility" means a residential facility for persons civilly confined under the provisions of this chapter that includes security measures sufficient to protect the community. Such facilities include total confinement facilities, secure community transition facilities, and any residence used as a court-ordered placement under RCW 71.09.096.

(16) "Secure community transition facility" means a residential facility for persons civilly committed and conditionally released to a less restrictive alternative under this chapter. A secure community transition facility has supervision and security, and either provides or ensures the provision of sex offender treatment services. Secure community transition facilities include but are not limited to the facility established pursuant to RCW 71.09.250(1)(a)(i) and any community-based facilities established under this chapter and operated by the secretary or under contract with the secretary.

(17) "Sexually violent offense" means an act committed on, before, or after July 1, 1990, that is: (a) An act defined in Title 9A RCW as rape in the first degree, rape in the second degree by forcible compulsion, rape of a child in the first or second degree, statutory rape in the first or second degree, indecent liberties by forcible compulsion, indecent liberties against a child under age fourteen, incest against a child under age fourteen, or child molestation in the first or second degree; (b) a felony offense in effect at any time prior to July 1, 1990, that is comparable to a sexually violent offense as defined in (a) of this subsection, or any federal or out-of-state conviction for a felony offense that under the laws of this state would be a sexually violent offense as defined in this subsection; (c) an act of murder in the first or second degree, assault in the first or second degree, assault of a child in the first or second degree, kidnapping in the first or second degree, burglary in the first degree, residential burglary, or unlawful imprisonment, which act, either at the time of sentencing for the offense or subsequently during civil commitment proceedings pursuant to this chapter, has been determined beyond a reasonable doubt to have been sexually motivated, as that term is defined in RCW 9.94A.030; or (d) an act as described in chapter 9A.28 RCW, that is an attempt, criminal solicitation, or criminal conspiracy to commit one of the felonies designated in (a), (b), or (c) of this subsection.

(18) "Sexually violent predator" means any person who has been convicted of or charged with a crime of sexual violence and who suffers from a mental abnormality or personality disorder which makes the person likely to engage in predatory acts of sexual violence if not confined in a secure facility.

(19) "Total confinement facility" means a secure facility that provides supervision and sex offender treatment services in a total confinement setting. Total confinement facilities include the special commitment center and any similar facility designated as a total confinement facility by the secretary. [2009 c 409 § 1; 2006 c 303 § 10. Prior: 2003 c 216 § 2; 2003 c 50 § 1; 2002 c 68 § 4; 2002 c 58 § 2; 2001 2nd sp.s. c 12 § 102; 2001 c 286 § 4; 1995 c 216 § 1; 1992 c 145 § 17; 1990 1st ex.s. c 12 § 2; 1990 c 3 § 1002.]

Application—2009 c 409: "This act applies to all persons currently committed or awaiting commitment under chapter 71.09 RCW either on, before, or after May 7, 2009, whether confined in a secure facility or on conditional release." [2009 c 409 § 15.]

Effective date—2009 c 409: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 7, 2009]." [2009 c 409 § 16.]

Severability—Effective date—2003 c 216: See notes following RCW 71.09.300.

Application—2003 c 50: "This act applies prospectively only and not retroactively and does not apply to development regulations adopted or amended prior to April 17, 2003." [2003 c 50 § 3.]

Effective date—2003 c 50: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 17, 2003]." [2003 c 50 § 4.]

Purpose—Severability—Effective date—2002 c 68: See notes following RCW 36.70A.200.

Effective date—2002 c 58: See note following RCW 71.09.085.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Recommendations—Application—Effective date—2001 c 286: See notes following RCW 71.09.015.

Effective date—1990 1st ex.s. c 12: See note following RCW 13.40.020.

71.09.025 Notice to prosecuting attorney prior to release. (1)(a) When it appears that a person may meet the criteria of a sexually violent predator as defined in *RCW 71.09.020(16), the agency with jurisdiction shall refer the person in writing to the prosecuting attorney of the county in which an action under this chapter may be filed pursuant to RCW 71.09.030 and the attorney general, three months prior to:

(i) The anticipated release from total confinement of a person who has been convicted of a sexually violent offense;

(ii) The anticipated release from total confinement of a person found to have committed a sexually violent offense as a juvenile;

(iii) Release of a person who has been charged with a sexually violent offense and who has been determined to be incompetent to stand trial pursuant to RCW 10.77.086(4); or

(iv) Release of a person who has been found not guilty by reason of insanity of a sexually violent offense pursuant to **RCW 10.77.020(3).

(b) The agency shall provide the prosecuting agency with all relevant information including but not limited to the following information:

(i) A complete copy of the institutional records compiled by the department of corrections relating to the person, and any such out-of-state department of corrections' records, if available;

(ii) A complete copy, if applicable, of any file compiled by the indeterminate sentence review board relating to the person;

(iii) All records relating to the psychological or psychiatric evaluation and/or treatment of the person;

(iv) A current record of all prior arrests and convictions, and full police case reports relating to those arrests and convictions; and

(v) A current mental health evaluation or mental health records review.

(c) The prosecuting agency has the authority, consistent with RCW 72.09.345(3), to obtain all records relating to the person if the prosecuting agency deems such records are necessary to fulfill its duties under this chapter. The prosecuting agency may only disclose such records in the course of performing its duties pursuant to this chapter, unless otherwise authorized by law.

(d) The prosecuting agency has the authority to utilize the inquiry judge procedures of chapter 10.27 RCW prior to the filing of any action under this chapter to seek the issuance of compulsory process for the production of any records necessary for a determination of whether to seek the civil commitment of a person under this chapter. Any records obtained pursuant to this process may only be disclosed by the prosecuting agency in the course of performing its duties pursuant to this chapter, or unless otherwise authorized by law.

(2) The agency, its employees, and officials shall be immune from liability for any good-faith conduct under this section.

(3) As used in this section, "agency with jurisdiction" means that agency with the authority to direct the release of a person serving a sentence or term of confinement and includes the department of corrections, the indeterminate sentence review board, and the department of social and health services. [2009 c 409 § 2; 2008 c 213 § 11; 2001 c 286 § 5; 1995 c 216 § 2; 1992 c 45 § 3.]

Reviser's note: *(1) RCW 71.09.020 was amended by 2009 c 409 § 1, changing subsection (16) to subsection (18).

**(2) RCW 10.77.020 was amended by 1998 c 297 § 30, deleting subsection (3).

Application—Effective date—2009 c 409: See notes following RCW 71.09.020.

Recommendations—Application—Effective date—2001 c 286: See notes following RCW 71.09.015.

Severability—Application—1992 c 45: See notes following RCW 9.94A.840.

71.09.030 Sexually violent predator petition—Filing. (1) A petition may be filed alleging that a person is a sexually violent predator and stating sufficient facts to support such allegation when it appears that: (a) A person who at any time previously has been convicted of a sexually violent offense is about to be released from total confinement; (b) a person found to have committed a sexually violent offense as a juvenile is about to be released from total confinement; (c) a person who has been charged with a sexually violent offense and who has been determined to be incompetent to stand trial is about to be released, or has been released, pursuant to RCW 10.77.086(4); (d) a person who has been found not guilty by reason of insanity of a sexually violent offense is about to be released, or has been released, pursuant to RCW *10.77.020(3), 10.77.110 (1) or (3), or 10.77.150; or (e) a person who at any time previously has been convicted of a sexually violent offense and has since been released from total confinement and has committed a recent overt act.

(2) The petition may be filed by:

(a) The prosecuting attorney of a county in which:

(i) The person has been charged or convicted with a sexually violent offense;

(ii) A recent overt act occurred involving a person covered under subsection (1)(e) of this section; or

(iii) The person committed a recent overt act, or was charged or convicted of a criminal offense that would qualify as a recent overt act, if the only sexually violent offense charge or conviction occurred in a jurisdiction other than Washington; or

(b) The attorney general, if requested by the county prosecuting attorney identified in (a) of this subsection. If the county prosecuting attorney requests that the attorney general file and prosecute a case under this chapter, then the county shall charge the attorney general only the fees, including filing and jury fees, that would be charged and paid by the county prosecuting attorney, if the county prosecuting attorney retained the case. [2009 c 409 § 3; 2008 c 213 § 12; 1995 c 216 § 3; 1992 c 45 § 4; 1990 1st ex.s. c 12 § 3; 1990 c 3 § 1003.]

***Reviser's note:** RCW 10.77.020 was amended by 1998 c 297 § 30, deleting subsection (3).

Application—Effective date—2009 c 409: See notes following RCW 71.09.020.

Severability—Application—1992 c 45: See notes following RCW 9.94A.840.

Effective date—1990 1st ex.s. c 12: See note following RCW 13.40.020.

71.09.040 Sexually violent predator petition—Probable cause hearing—Judicial determination—Transfer for evaluation. (1) Upon the filing of a petition under RCW 71.09.030, the judge shall determine whether probable cause exists to believe that the person named in the petition is a sexually violent predator. If such determination is made the judge shall direct that the person be taken into custody.

(2) Within seventy-two hours after a person is taken into custody pursuant to subsection (1) of this section, the court shall provide the person with notice of, and an opportunity to appear in person at, a hearing to contest probable cause as to whether the person is a sexually violent predator. In order to assist the person at the hearing, within twenty-four hours of service of the petition, the prosecuting agency shall provide to the person or his or her counsel a copy of all materials provided to the prosecuting agency by the referring agency pursuant to RCW 71.09.025, or obtained by the prosecuting agency pursuant to RCW 71.09.025(1) (c) and (d). At this hearing, the court shall (a) verify the person's identity, and (b) determine whether probable cause exists to believe that the person is a sexually violent predator. At the probable cause hearing, the state may rely upon the petition and certification for determination of probable cause filed pursuant to RCW 71.09.030. The state may supplement this with additional documentary evidence or live testimony. The person may be held in total confinement at the county jail until the trial court renders a decision after the conclusion of the seventy-two hour probable cause hearing. The county shall be entitled to reimbursement for the cost of housing and transporting the person pursuant to rules adopted by the secretary.

(3) At the probable cause hearing, the person shall have the following rights in addition to the rights previously specified: (a) To be represented by counsel; (b) to present evidence on his or her behalf; (c) to cross-examine witnesses who testify against him or her; (d) to view and copy all petitions and reports in the court file. The court must permit a witness called by either party to testify by telephone.

Because this is a special proceeding, discovery pursuant to the civil rules shall not occur until after the hearing has been held and the court has issued its decision.

(4) If the probable cause determination is made, the judge shall direct that the person be transferred to an appropriate facility for an evaluation as to whether the person is a sexually violent predator. The evaluation shall be conducted by a person deemed to be professionally qualified to conduct such an examination pursuant to rules developed by the department of social and health services. In adopting such rules, the department of social and health services shall consult with the department of health and the department of corrections. In no event shall the person be released from confinement prior to trial. A witness called by either party shall be permitted to testify by telephone. [2009 c 409 § 4; 2001 c 286 § 6; 1995 c 216 § 4; 1990 c 3 § 1004.]

Application—Effective date—2009 c 409: See notes following RCW 71.09.020.

Recommendations—Application—Effective date—2001 c 286: See notes following RCW 71.09.015.

71.09.050 Trial—Rights of parties. (1) Within forty-five days after the completion of any hearing held pursuant to RCW 71.09.040, the court shall conduct a trial to determine whether the person is a sexually violent predator. The trial may be continued upon the request of either party and a showing of good cause, or by the court on its own motion in the due administration of justice, and when the respondent will not be substantially prejudiced. At all stages of the proceedings under this chapter, any person subject to this chapter shall be entitled to the assistance of counsel, and if the person is indigent, the court shall appoint counsel to assist him or her. The person shall be confined in a secure facility for the duration of the trial.

(2) Whenever any person is subjected to an examination under this chapter, he or she may retain experts or professional persons to perform an examination on their behalf. When the person wishes to be examined by a qualified expert or professional person of his or her own choice, such examiner shall be permitted to have reasonable access to the person for the purpose of such examination, as well as to all relevant medical and psychological records and reports. In the case of a person who is indigent, the court shall, upon the person's request, assist the person in obtaining an expert or professional person to perform an examination or participate in the trial on the person's behalf.

(3) The person, the prosecuting agency, or the judge shall have the right to demand that the trial be before a twelve-person jury. If no demand is made, the trial shall be before the court. [2009 c 409 § 5; 1995 c 216 § 5; 1990 c 3 § 1005.]

Application—Effective date—2009 c 409: See notes following RCW 71.09.020.

71.09.060 Trial—Determination—Commitment procedures. (1) The court or jury shall determine whether, beyond a reasonable doubt, the person is a sexually violent predator. In determining whether or not the person would be likely to engage in predatory acts of sexual violence if not confined in a secure facility, the fact finder may consider only placement conditions and voluntary treatment options that would exist for the person if unconditionally released from detention on the sexually violent predator petition. The community protection program under RCW 71A.12.230 may not be considered as a placement condition or treatment option available to the person if unconditionally released from detention on a sexually violent predator petition. When the determination is made by a jury, the verdict must be unanimous.

If, on the date that the petition is filed, the person was living in the community after release from custody, the state must also prove beyond a reasonable doubt that the person had committed a recent overt act. If the state alleges that the prior sexually violent offense that forms the basis for the petition for commitment was an act that was sexually motivated as provided in *RCW 71.09.020(15)(c), the state must prove beyond a reasonable doubt that the alleged sexually violent act was sexually motivated as defined in RCW 9.94A.030.

If the court or jury determines that the person is a sexually violent predator, the person shall be committed to the custody of the department of social and health services for placement in a secure facility operated by the department of social and health services for control, care, and treatment until such time as: (a) The person's condition has so changed that the person no longer meets the definition of a sexually violent predator; or (b) conditional release to a less restrictive alternative as set forth in RCW 71.09.092 is in the best interest of the person and conditions can be imposed that would adequately protect the community.

If the court or unanimous jury decides that the state has not met its burden of proving that the person is a sexually violent predator, the court shall direct the person's release.

If the jury is unable to reach a unanimous verdict, the court shall declare a mistrial and set a retrial within forty-five days of the date of the mistrial unless the prosecuting agency earlier moves to dismiss the petition. The retrial may be continued upon the request of either party accompanied by a showing of good cause, or by the court on its own motion in the due administration of justice provided that the respondent will not be substantially prejudiced. In no event may the person be released from confinement prior to retrial or dismissal of the case.

(2) If the person charged with a sexually violent offense has been found incompetent to stand trial, and is about to be or has been released pursuant to RCW 10.77.086(4), and his or her commitment is sought pursuant to subsection (1) of this section, the court shall first hear evidence and determine whether the person did commit the act or acts charged if the court did not enter a finding prior to dismissal under RCW 10.77.086(4) that the person committed the act or acts charged. The hearing on this issue must comply with all the procedures specified in this section. In addition, the rules of evidence applicable in criminal cases shall apply, and all constitutional rights available to defendants at criminal trials, other than the right not to be tried while incompetent, shall apply. After hearing evidence on this issue, the court shall make specific findings on whether the person did commit the act or acts charged, the extent to which the person's incompetence or developmental disability affected the outcome of the hearing, including its effect on the person's ability to consult with and assist counsel and to testify on his or her own behalf, the extent to which the evidence could be reconstructed with-

out the assistance of the person, and the strength of the prosecution's case. If, after the conclusion of the hearing on this issue, the court finds, beyond a reasonable doubt, that the person did commit the act or acts charged, it shall enter a final order, appealable by the person, on that issue, and may proceed to consider whether the person should be committed pursuant to this section.

(3) Except as otherwise provided in this chapter, the state shall comply with RCW 10.77.220 while confining the person. During all court proceedings where the person is present, the person shall be detained in a secure facility. If the proceedings last more than one day, the person may be held in the county jail for the duration of the proceedings, except the person may be returned to the department's custody on weekends and court holidays if the court deems such a transfer feasible. The county shall be entitled to reimbursement for the cost of housing and transporting the person pursuant to rules adopted by the secretary. The department shall not place the person, even temporarily, in a facility on the grounds of any state mental facility or regional habilitation center because these institutions are insufficiently secure for this population.

(4) A court has jurisdiction to order a less restrictive alternative placement only after a hearing ordered pursuant to RCW 71.09.090 following initial commitment under this section and in accord with the provisions of this chapter. [2009 c 409 § 6; 2008 c 213 § 13; 2006 c 303 § 11; 2001 c 286 § 7; 1998 c 146 § 1; 1995 c 216 § 6; 1990 1st ex.s. c 12 § 4; 1990 c 3 § 1006.]

***Reviser's note:** RCW 71.09.020 was amended by 2009 c 409 § 1, changing subsection (15) to subsection (17).

Application—Effective date—2009 c 409: See notes following RCW 71.09.020.

Recommendations—Application—Effective date—2001 c 286: See notes following RCW 71.09.015.

Effective date—1998 c 146: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 25, 1998]." [1998 c 146 § 2.]

Effective date—1990 1st ex.s. c 12: See note following RCW 13.40.020.

71.09.080 Rights of persons committed under this chapter. (1) Any person subjected to restricted liberty as a sexually violent predator pursuant to this chapter shall not forfeit any legal right or suffer any legal disability as a consequence of any actions taken or orders made, other than as specifically provided in this chapter, or as otherwise authorized by law.

(2) Any person committed pursuant to this chapter has the right to adequate care and individualized treatment. The department of social and health services shall keep records detailing all medical, expert, and professional care and treatment received by a committed person, and shall keep copies of all reports of periodic examinations made pursuant to this chapter. All such records and reports shall be made available upon request only to: The committed person, his or her attorney, the prosecuting attorney, the court, the protection and advocacy agency, or another expert or professional person who, upon proper showing, demonstrates a need for access to such records.

(3) At the time a person is taken into custody or transferred into a facility pursuant to a petition under this chapter, the professional person in charge of such facility or his or her designee shall take reasonable precautions to inventory and safeguard the personal property of the persons detained or transferred. A copy of the inventory, signed by the staff member making it, shall be given to the person detained and shall, in addition, be open to inspection to any responsible relative, subject to limitations, if any, specifically imposed by the detained person. For purposes of this subsection, "responsible relative" includes the guardian, conservator, attorney, spouse, parent, adult child, or adult brother or sister of the person. The facility shall not disclose the contents of the inventory to any other person without consent of the patient or order of the court.

(4) Nothing in this chapter prohibits a person presently committed from exercising a right presently available to him or her for the purpose of obtaining release from confinement, including the right to petition for a writ of habeas corpus.

(5) No indigent person may be conditionally released or unconditionally discharged under this chapter without suitable clothing, and the secretary shall furnish the person with such sum of money as is required by RCW 72.02.100 for persons without ample funds who are released from correctional institutions. As funds are available, the secretary may provide payment to the indigent persons conditionally released pursuant to this chapter consistent with the optional provisions of RCW 72.02.100 and 72.02.110, and may adopt rules to do so.

(6) If a civil commitment petition is dismissed, or a trier of fact determines that a person does not meet civil commitment criteria, the person shall be released within twenty-four hours of service of the release order on the superintendent of the special commitment center, or later by agreement of the person who is the subject of the petition. [2009 c 409 § 7; 1995 c 216 § 8; 1990 c 3 § 1008.]

Application—Effective date—2009 c 409: See notes following RCW 71.09.020.

71.09.090 Petition for conditional release to less restrictive alternative or unconditional discharge—Procedures. (1) If the secretary determines that the person's condition has so changed that either: (a) The person no longer meets the definition of a sexually violent predator; or (b) conditional release to a less restrictive alternative is in the best interest of the person and conditions can be imposed that adequately protect the community, the secretary shall authorize the person to petition the court for conditional release to a less restrictive alternative or unconditional discharge. The petition shall be filed with the court and served upon the prosecuting agency responsible for the initial commitment. The court, upon receipt of the petition for conditional release to a less restrictive alternative or unconditional discharge, shall within forty-five days order a hearing.

(2)(a) Nothing contained in this chapter shall prohibit the person from otherwise petitioning the court for conditional release to a less restrictive alternative or unconditional discharge without the secretary's approval. The secretary shall provide the committed person with an annual written notice of the person's right to petition the court for conditional release to a less restrictive alternative or unconditional dis-

charge over the secretary's objection. The notice shall contain a waiver of rights. The secretary shall file the notice and waiver form and the annual report with the court. If the person does not affirmatively waive the right to petition, the court shall set a show cause hearing to determine whether probable cause exists to warrant a hearing on whether the person's condition has so changed that: (i) He or she no longer meets the definition of a sexually violent predator; or (ii) conditional release to a proposed less restrictive alternative would be in the best interest of the person and conditions can be imposed that would adequately protect the community.

(b) The committed person shall have a right to have an attorney represent him or her at the show cause hearing, which may be conducted solely on the basis of affidavits or declarations, but the person is not entitled to be present at the show cause hearing. At the show cause hearing, the prosecuting attorney or attorney general shall present prima facie evidence establishing that the committed person continues to meet the definition of a sexually violent predator and that a less restrictive alternative is not in the best interest of the person and conditions cannot be imposed that adequately protect the community. In making this showing, the state may rely exclusively upon the annual report prepared pursuant to RCW 71.09.070. The committed person may present responsive affidavits or declarations to which the state may reply.

(c) If the court at the show cause hearing determines that either: (i) The state has failed to present prima facie evidence that the committed person continues to meet the definition of a sexually violent predator and that no proposed less restrictive alternative is in the best interest of the person and conditions cannot be imposed that would adequately protect the community; or (ii) probable cause exists to believe that the person's condition has so changed that: (A) The person no longer meets the definition of a sexually violent predator; or (B) release to a proposed less restrictive alternative would be in the best interest of the person and conditions can be imposed that would adequately protect the community, then the court shall set a hearing on either or both issues.

(d) If the court has not previously considered the issue of release to a less restrictive alternative, either through a trial on the merits or through the procedures set forth in RCW 71.09.094(1), the court shall consider whether release to a less restrictive alternative would be in the best interests of the person and conditions can be imposed that would adequately protect the community, without considering whether the person's condition has changed. The court may not find probable cause for a trial addressing less restrictive alternatives unless a proposed less restrictive alternative placement meeting the conditions of RCW 71.09.092 is presented to the court at the show cause hearing.

(3)(a) At the hearing resulting from subsection (1) or (2) of this section, the committed person shall be entitled to be present and to the benefit of all constitutional protections that were afforded to the person at the initial commitment proceeding. The prosecuting agency shall represent the state and shall have a right to a jury trial and to have the committed person evaluated by experts chosen by the state. The committed person shall also have the right to a jury trial and the right to have experts evaluate him or her on his or her behalf and the court shall appoint an expert if the person is indigent and requests an appointment.

(b) If the issue at the hearing is whether the person should be unconditionally discharged, the burden of proof shall be upon the state to prove beyond a reasonable doubt that the committed person's condition remains such that the person continues to meet the definition of a sexually violent predator. Evidence of the prior commitment trial and disposition is admissible. The recommitment proceeding shall otherwise proceed as set forth in RCW 71.09.050 and 71.09.060.

(c) If the issue at the hearing is whether the person should be conditionally released to a less restrictive alternative, the burden of proof at the hearing shall be upon the state to prove beyond a reasonable doubt that conditional release to any proposed less restrictive alternative either: (i) Is not in the best interest of the committed person; or (ii) does not include conditions that would adequately protect the community. Evidence of the prior commitment trial and disposition is admissible.

(4)(a) Probable cause exists to believe that a person's condition has "so changed," under subsection (2) of this section, only when evidence exists, since the person's last commitment trial, or less restrictive alternative revocation proceeding, of a substantial change in the person's physical or mental condition such that the person either no longer meets the definition of a sexually violent predator or that a conditional release to a less restrictive alternative is in the person's best interest and conditions can be imposed to adequately protect the community.

(b) A new trial proceeding under subsection (3) of this section may be ordered, or a trial proceeding may be held, only when there is current evidence from a licensed professional of one of the following and the evidence presents a change in condition since the person's last commitment trial proceeding:

(i) An identified physiological change to the person, such as paralysis, stroke, or dementia, that renders the committed person unable to commit a sexually violent act and this change is permanent; or

(ii) A change in the person's mental condition brought about through positive response to continuing participation in treatment which indicates that the person meets the standard for conditional release to a less restrictive alternative or that the person would be safe to be at large if unconditionally released from commitment.

(c) For purposes of this section, a change in a single demographic factor, without more, does not establish probable cause for a new trial proceeding under subsection (3) of this section. As used in this section, a single demographic factor includes, but is not limited to, a change in the chronological age, marital status, or gender of the committed person.

(5) The jurisdiction of the court over a person civilly committed pursuant to this chapter continues until such time as the person is unconditionally discharged. [2009 c 409 § 8; 2005 c 344 § 2; 2001 c 286 § 9; 1995 c 216 § 9; 1992 c 45 § 7; 1990 c 3 § 1009.]

Application—Effective date—2009 c 409: See notes following RCW 71.09.020.

Findings—Intent—2005 c 344: "The legislature finds that the decisions in *In re Young,* 120 Wn. App. 753, *review denied,* 152 Wn.2d 1007 (2004) and *In re Ward,* 125 Wn. App. 381 (2005) illustrate an unintended consequence of language in chapter 71.09 RCW.

The *Young* and *Ward* decisions are contrary to the legislature's intent set forth in RCW 71.09.010 that civil commitment pursuant to chapter 71.09

RCW address the "very long-term" needs of the sexually violent predator population for treatment and the equally long-term needs of the community for protection from these offenders. The legislature finds that the mental abnormalities and personality disorders that make a person subject to commitment under chapter 71.09 RCW are severe and chronic and do not remit due solely to advancing age or changes in other demographic factors.

The legislature finds, although severe medical conditions like stroke, paralysis, and some types of dementia can leave a person unable to commit further sexually violent acts, that a mere advance in age or a change in gender or some other demographic factor after the time of commitment does not merit a new trial proceeding under RCW 71.09.090. To the contrary, the legislature finds that a new trial ordered under the circumstances set forth in *Young* and *Ward* subverts the statutory focus on treatment and reduces community safety by removing all incentive for successful treatment participation in favor of passive aging and distracting committed persons from fully engaging in sex offender treatment.

The *Young* and *Ward* decisions are contrary to the legislature's intent that the risk posed by persons committed under chapter 71.09 RCW will generally require prolonged treatment in a secure facility followed by intensive community supervision in the cases where positive treatment gains are sufficient for community safety. The legislature has, under the guidance of the federal court, provided avenues through which committed persons who successfully progress in treatment will be supported by the state in a conditional release to a less restrictive alternative that is in the best interest of the committed person and provides adequate safeguards to the community and is the appropriate next step in the person's treatment.

The legislature also finds that, in some cases, a committed person may appropriately challenge whether he or she continues to meet the criteria for commitment. Because of this, the legislature enacted RCW 71.09.070 and 71.09.090, requiring a regular review of a committed person's status and permitting the person the opportunity to present evidence of a relevant change in condition from the time of the last commitment trial proceeding. These provisions are intended only to provide a method of revisiting the indefinite commitment due to a relevant change in the person's condition, not an alternate method of collaterally attacking a person's indefinite commitment for reasons unrelated to a change in condition. Where necessary, other existing statutes and court rules provide ample opportunity to resolve any concerns about prior commitment trials. Therefore, the legislature intends to clarify the "so changed" standard." [2005 c 344 § 1.]

Severability—2005 c 344: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2005 c 344 § 3.]

Effective date—2005 c 344: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 9, 2005]." [2005 c 344 § 4.]

Recommendations—Application—Effective date—2001 c 286: See notes following RCW 71.09.015.

Severability—Application—1992 c 45: See notes following RCW 9.94A.840.

71.09.092 Conditional release to less restrictive alternative—Findings. Before the court may enter an order directing conditional release to a less restrictive alternative, it must find the following: (1) The person will be treated by a treatment provider who is qualified to provide such treatment in the state of Washington under chapter 18.155 RCW; (2) the treatment provider has presented a specific course of treatment and has agreed to assume responsibility for such treatment and will report progress to the court on a regular basis, and will report violations immediately to the court, the prosecutor, the supervising community corrections officer, and the superintendent of the special commitment center; (3) housing exists in Washington that is sufficiently secure to protect the community, and the person or agency providing housing to the conditionally released person has agreed in writing to accept the person, to provide the level of security required by the court, and immediately to report to the court, the prosecutor, the supervising community corrections officer, and the superintendent of the special commitment center if the person leaves the housing to which he or she has been assigned without authorization; (4) the person is willing to comply with the treatment provider and all requirements imposed by the treatment provider and by the court; and (5) the person will be under the supervision of the department of corrections and is willing to comply with supervision requirements imposed by the department of corrections. [2009 c 409 § 9; 1995 c 216 § 10.]

Application—Effective date—2009 c 409: See notes following RCW 71.09.020.

71.09.096 Conditional release to less restrictive alternative—Judgment—Conditions—Annual review. (1) If the court or jury determines that conditional release to a less restrictive alternative is in the best interest of the person and includes conditions that would adequately protect the community, and the court determines that the minimum conditions set forth in RCW 71.09.092 and in this section are met, the court shall enter judgment and direct a conditional release.

(2) The court shall impose any additional conditions necessary to ensure compliance with treatment and to protect the community. If the court finds that conditions do not exist that will both ensure the person's compliance with treatment and protect the community, then the person shall be remanded to the custody of the department of social and health services for control, care, and treatment in a secure facility as designated in RCW 71.09.060(1).

(3) If the service provider designated by the court to provide inpatient or outpatient treatment or to monitor or supervise any other terms and conditions of a person's placement in a less restrictive alternative is other than the department of social and health services or the department of corrections, then the service provider so designated must agree in writing to provide such treatment, monitoring, or supervision in accord with this section. Any person providing or agreeing to provide treatment, monitoring, or supervision services pursuant to this chapter may be compelled to testify and any privilege with regard to such person's testimony is deemed waived.

(4) Prior to authorizing any release to a less restrictive alternative, the court shall impose such conditions upon the person as are necessary to ensure the safety of the community. The court shall order the department of corrections to investigate the less restrictive alternative and recommend any additional conditions to the court. These conditions shall include, but are not limited to the following: Specification of residence, prohibition of contact with potential or past victims, prohibition of alcohol and other drug use, participation in a specific course of inpatient or outpatient treatment that may include monitoring by the use of polygraph and plethysmograph, monitoring through the use of global positioning satellite technology, supervision by a department of corrections community corrections officer, a requirement that the person remain within the state unless the person receives prior authorization by the court, and any other conditions that the court determines are in the best interest of the person or others. A copy of the conditions of release shall be given to the person and to any designated service providers.

(5) Any service provider designated to provide inpatient or outpatient treatment shall monthly, or as otherwise directed by the court, submit to the court, to the department of social and health services facility from which the person was released, to the prosecuting agency, and to the supervising community corrections officer, a report stating whether the person is complying with the terms and conditions of the conditional release to a less restrictive alternative.

(6) Each person released to a less restrictive alternative shall have his or her case reviewed by the court that released him or her no later than one year after such release and annually thereafter until the person is unconditionally discharged. Review may occur in a shorter time or more frequently, if the court, in its discretion on its own motion, or on motion of the person, the secretary, or the prosecuting agency so determines. The sole question to be determined by the court is whether the person shall continue to be conditionally released to a less restrictive alternative. The court in making its determination shall be aided by the periodic reports filed pursuant to subsection (5) of this section and the opinions of the secretary and other experts or professional persons. [2009 c 409 § 10; 2001 c 286 § 12; 1995 c 216 § 12.]

Application—Effective date—2009 c 409: See notes following RCW 71.09.020.

Recommendations—Application—Effective date—2001 c 286: See notes following RCW 71.09.015.

71.09.098 Revoking or modifying terms of conditional release to less restrictive alternative—Hearing—Custody pending hearing on revocation or modification. (1) Any service provider submitting reports pursuant to RCW 71.09.096(6), the supervising community corrections officer, the prosecuting agency, or the secretary's designee may petition the court for an immediate hearing for the purpose of revoking or modifying the terms of the person's conditional release to a less restrictive alternative if the petitioner believes the released person: (a) Violated or is in violation of the terms and conditions of the court's conditional release order; or (b) is in need of additional care, monitoring, supervision, or treatment.

(2) The community corrections officer or the secretary's designee may restrict the person's movement in the community until the petition is determined by the court. The person may be taken into custody if:

(a) The supervising community corrections officer, the secretary's designee, or a law enforcement officer reasonably believes the person has violated or is in violation of the court's conditional release order; or

(b) The supervising community corrections officer or the secretary's designee reasonably believes that the person is in need of additional care, monitoring, supervision, or treatment because the person presents a danger to himself or herself or others if his or her conditional release under the conditions imposed by the court's release order continues.

(3)(a) Persons taken into custody pursuant to subsection (2) of this section shall:

(i) Not be released until such time as a hearing is held to determine whether to revoke or modify the person's conditional release order and the court has issued its decision; and

(ii) Be held in the county jail, at a secure community transition facility, or at the total confinement facility, at the discretion of the secretary's designee.

(b) The court shall be notified before the close of the next judicial day that the person has been taken into custody and shall promptly schedule a hearing.

(4) Before any hearing to revoke or modify the person's conditional release order, both the prosecuting agency and the released person shall have the right to request an immediate mental examination of the released person. If the conditionally released person is indigent, the court shall, upon request, assist him or her in obtaining a qualified expert or professional person to conduct the examination.

(5) At any hearing to revoke or modify the conditional release order:

(a) The prosecuting agency shall represent the state, including determining whether to proceed with revocation or modification of the conditional release order;

(b) Hearsay evidence is admissible if the court finds that it is otherwise reliable; and

(c) The state shall bear the burden of proving by a preponderance of the evidence that the person has violated or is in violation of the court's conditional release order or that the person is in need of additional care, monitoring, supervision, or treatment.

(6)(a) If the court determines that the state has met its burden referenced in subsection (5)(c) of this section, and the issue before the court is revocation of the court's conditional release order, the court shall consider the evidence presented by the parties and the following factors relevant to whether continuing the person's conditional release is in the person's best interests or adequate to protect the community:

(i) The nature of the condition that was violated by the person or that the person was in violation of in the context of the person's criminal history and underlying mental conditions;

(ii) The degree to which the violation was intentional or grossly negligent;

(iii) The ability and willingness of the released person to strictly comply with the conditional release order;

(iv) The degree of progress made by the person in community-based treatment; and

(v) The risk to the public or particular persons if the conditional release continues under the conditional release order that was violated.

(b) Any factor alone, or in combination, shall support the court's determination to revoke the conditional release order.

(7) If the court determines the state has met its burden referenced in subsection (5)(c) of this section, and the issue before the court is modification of the court's conditional release order, the court shall modify the conditional release order by adding conditions if the court determines that the person is in need of additional care, monitoring, supervision, or treatment. The court has authority to modify its conditional release order by substituting a new treatment provider, requiring new housing for the person, or imposing such additional supervision conditions as the court deems appropriate.

(8) A person whose conditional release has been revoked shall be remanded to the custody of the secretary for control, care, and treatment in a total confinement facility as designated in RCW 71.09.060(1). The person is thereafter eligible

for conditional release only in accord with the provisions of RCW 71.09.090 and related statutes. [2009 c 409 § 11; 2006 c 282 § 1; 2001 c 286 § 13; 1995 c 216 § 13.]

Application—Effective date—2009 c 409: See notes following RCW 71.09.020.

Recommendations—Application—Effective date—2001 c 286: See notes following RCW 71.09.015.

71.09.111 Department of social and health services—Disclosures to the prosecuting agency. The department of social and health services shall provide to the prosecuting agency a copy of all reports made by the department to law enforcement in which a person detained or committed under this chapter is named or listed as a suspect, witness, or victim, as well as a copy of all reports received from law enforcement. [2009 c 409 § 12.]

Application—Effective date—2009 c 409: See notes following RCW 71.09.020.

71.09.112 Department of social and health services—Jurisdiction and revocation of conditional release after criminal conviction—Exception. A person subject to court order under the provisions of this chapter who is thereafter convicted of a criminal offense remains under the jurisdiction of the department and shall be returned to the custody of the department following: (1) Completion of the criminal sentence; or (2) release from confinement in a state, federal, or local correctional facility. Any conditional release order shall be immediately revoked upon conviction for a criminal offense.

This section does not apply to persons subject to a court order under the provisions of this chapter who are thereafter sentenced to life without the possibility of release. [2009 c 409 § 13; 2002 c 19 § 1.]

Application—Effective date—2009 c 409: See notes following RCW 71.09.020.

71.09.350 Examination and treatment only by certified providers—Exceptions. (1) Examinations and treatment of sexually violent predators who are conditionally released to a less restrictive alternative under this chapter shall be conducted only by certified sex offender treatment providers or certified affiliate sex offender treatment providers under chapter 18.155 RCW unless the court or the department of social and health services finds that: (a) The treatment provider is employed by the department; or (b)(i) all certified sex offender treatment providers or certified affiliate sex offender treatment providers become unavailable to provide treatment within a reasonable geographic distance of the person's home, as determined in rules adopted by the department of social and health services; and (ii) the evaluation and treatment plan comply with the rules adopted by the department of social and health services.

A treatment provider approved by the department of social and health services under (b) of this subsection, who is not certified by the department of health, shall consult with a certified sex offender treatment provider during the person's period of treatment to ensure compliance with the rules adopted by the department of health. The frequency and content of the consultation shall be based on the recommendation of the certified sex offender treatment provider.

(2) A treatment provider, whether or not he or she is employed or approved by the department of social and health services under subsection (1) of this section or otherwise certified, may not perform or provide treatment of sexually violent predators under this section if the treatment provider has been:

(a) Convicted of a sex offense, as defined in RCW 9.94A.030;

(b) Convicted in any other jurisdiction of an offense that under the laws of this state would be classified as a sex offense as defined in RCW 9.94A.030; or

(c) Suspended or otherwise restricted from practicing any health care profession by competent authority in any state, federal, or foreign jurisdiction.

(3) Nothing in this section prohibits a qualified expert from examining or evaluating a sexually violent predator who has been conditionally released for purposes of presenting an opinion in court proceedings. [2009 c 409 § 14; 2004 c 38 § 14; 2001 2nd sp.s. c 12 § 404.]

Application—Effective date—2009 c 409: See notes following RCW 71.09.020.

Effective date—2004 c 38: See note following RCW 18.155.075.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

71.09.903 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. ***(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 159.]

Chapter 71.12 RCW
PRIVATE ESTABLISHMENTS

Sections

71.12.540 Recommendations to be kept on file—Records of inmates.
71.12.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. *(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*

71.12.540 Recommendations to be kept on file—Records of inmates. The authorities of each establishment as defined in this chapter shall place on file in the office of the establishment the recommendations made by the department of health as a result of such visits, for the purpose of consultation by such authorities, and for reference by the department representatives upon their visits. Every such establish-

ment shall keep records of every person admitted thereto as follows and shall furnish to the department, when required, the following data: Name, age, sex, marital status, date of admission, voluntary or other commitment, name of physician or psychiatric advanced registered nurse practitioner, diagnosis, and date of discharge. [2009 c 217 § 11; 1989 1st ex.s. c 9 § 233; 1979 c 141 § 139; 1959 c 25 § 71.12.540. Prior: 1949 c 198 § 63; Rem. Supp. 1949 § 6953-62.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

71.12.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. ***(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 160.]

Chapter 71.24 RCW
COMMUNITY MENTAL HEALTH SERVICES ACT

Sections

71.24.310 Administration of chapters 71.05 and 71.24 RCW through regional support networks—Implementation of chapter 71.05 RCW *(as amended by 2009 c 564)*.
71.24.310 Administration of chapters 71.05 and 71.24 RCW through regional support networks—Implementation of chapter 71.05 RCW *(as amended by 2009 c 564)*.
71.24.470 Offenders with mental illness who are believed to be dangerous—Contract for case management—Use of appropriated funds.
71.24.480 Offenders with mental illness who are believed to be dangerous—Limitation on liability due to treatment—Reporting requirements.

71.24.310 Administration of chapters 71.05 and 71.24 RCW through regional support networks—Implementation of chapter 71.05 RCW *(as amended by 2009 c 564)*. The legislature finds that administration of chapter 71.05 RCW and this chapter can be most efficiently and effectively implemented as part of the regional support network defined in RCW 71.24.025. For this reason, the legislature intends that the department and the regional support networks shall work together to implement chapter 71.05 RCW as follows:

(1) By June 1, 2006, regional support networks shall recommend to the department the number of state hospital beds that should be allocated for use by each regional support network. The statewide total allocation shall not exceed the number of state hospital beds offering long-term inpatient care, as defined in this chapter, for which funding is provided in the biennial appropriations act.

(2) If there is consensus among the regional support networks regarding the number of state hospital beds that should be allocated for use by each regional support network, the department shall contract with each regional support network accordingly.

(3) If there is not consensus among the regional support networks regarding the number of beds that should be allocated for use by each regional support network, the department shall establish by emergency rule the number of state hospital beds that are available for use by each regional support network. The emergency rule shall be effective September 1, 2006. The primary factor used in the allocation shall be the estimated number of ((~~acutely and chronically mentally ill~~)) adults with acute and chronic mental illness in each regional support network area, based upon population-adjusted incidence and utilization.

(4) The allocation formula shall be updated at least every three years to reflect demographic changes, and new evidence regarding the incidence of acute and chronic mental illness and the need for long-term inpatient care. In the updates, the statewide total allocation shall include (a) all state hospital beds offering long-term inpatient care for which funding is provided in the biennial appropriations act; plus (b) the estimated equivalent number of beds or comparable diversion services contracted in accordance with subsection (5) of this section.

(5) The department is encouraged to enter performance-based contracts with regional support networks to provide some or all of the regional support network's allocated long-term inpatient treatment capacity in the community, rather than in the state hospital. The performance contracts shall specify the number of patient days of care available for use by the regional support network in the state hospital.

(6) If a regional support network uses more state hospital patient days of care than it has been allocated under subsection (3) or (4) of this section, or than it has contracted to use under subsection (5) of this section, whichever is less, it shall reimburse the department for that care. The reimbursement rate per day shall be the hospital's total annual budget for long-term inpatient care, divided by the total patient days of care assumed in development of that budget.

(7) One-half of any reimbursements received pursuant to subsection (6) of this section shall be used to support the cost of operating the state hospital and, during calendar year 2009, implementing new services that will enable a regional support network to reduce its utilization of the state hospital. The department shall distribute the remaining half of such reimbursements among regional support networks that have used less than their allocated or contracted patient days of care at that hospital, proportional to the number of patient days of care not used. [2009 c 564 § 952; 2006 c 333 § 107; 1989 c 205 § 6.]

Effective date—2009 c 564: See note following RCW 2.68.020.

71.24.310 Administration of chapters 71.05 and 71.24 RCW through regional support networks—Implementation of chapter 71.05 RCW *(as amended by 2009 c 564)*. The legislature finds that administration of chapter 71.05 RCW and this chapter can be most efficiently and effectively implemented as part of the regional support network defined in RCW 71.24.025. For this reason, the legislature intends that the department and the regional support networks shall work together to implement chapter 71.05 RCW as follows:

(1) By June 1, 2006, regional support networks shall recommend to the department the number of state hospital beds that should be allocated for use by each regional support network. The statewide total allocation shall not exceed the number of state hospital beds offering long-term inpatient care, as defined in this chapter, for which funding is provided in the biennial appropriations act.

(2) If there is consensus among the regional support networks regarding the number of state hospital beds that should be allocated for use by each regional support network, the department shall contract with each regional support network accordingly.

(3) If there is not consensus among the regional support networks regarding the number of beds that should be allocated for use by each regional support network, the department shall establish by emergency rule the number of state hospital beds that are available for use by each regional support network. The emergency rule shall be effective September 1, 2006. The primary factor used in the allocation shall be the estimated number of ((~~acutely and chronically mentally ill~~)) adults with acute and chronic mental illness in each regional support network area, based upon population-adjusted incidence and utilization.

(4) The allocation formula shall be updated at least every three years to reflect demographic changes, and new evidence regarding the incidence of acute and chronic mental illness and the need for long-term inpatient care. In the updates, the statewide total allocation shall include (a) all state hospital beds offering long-term inpatient care for which funding is provided in the biennial appropriations act; plus (b) the estimated equivalent number of beds or comparable diversion services contracted in accordance with subsection (5) of this section.

(5) The department is encouraged to enter performance-based contracts with regional support networks to provide some or all of the regional support network's allocated long-term inpatient treatment capacity in the community, rather than in the state hospital. The performance contracts shall specify the number of patient days of care available for use by the regional support network in the state hospital.

(6) If a regional support network uses more state hospital patient days of care than it has been allocated under subsection (3) or (4) of this section, or than it has contracted to use under subsection (5) of this section, whichever is less, it shall reimburse the department for that care. The reimbursement rate per day shall be the hospital's total annual budget for long-term inpatient care, divided by the total patient days of care assumed in development of that budget.

(7) One-half of any reimbursements received pursuant to subsection (6) of this section shall be used to support the cost of operating the state hospital and, during the 2007-2009 fiscal biennium, implementing new services that will enable a regional support network to reduce its utilization of the state hospital. The department shall distribute the remaining half of such reimbursements among regional support networks that have used less than their allocated or contracted patient days of care at that hospital, proportional to the number of patient days of care not used. [2009 c 564 § 1810; 2006 c 333 § 107; 1989 c 205 § 6.]

Reviser's note: RCW 71.24.310 was amended twice during the 2009 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

Effective date—2009 c 564: See note following RCW 2.68.020.

Finding—Purpose—Intent—Severability—Part headings not law—Effective dates—2006 c 333: See notes following RCW 71.24.016.

Evaluation of transition to regional systems—1989 c 205: See note following RCW 71.24.015.

71.24.470 Offenders with mental illness who are believed to be dangerous—Contract for case management—Use of appropriated funds. (1) The secretary shall contract, to the extent that funds are appropriated for this purpose, for case management services and such other services as the secretary deems necessary to assist offenders identified under RCW 72.09.370 for participation in the offender reentry community safety program. The contracts may be with regional support networks or any other qualified and appropriate entities.

(2) The case manager has the authority to assist these offenders in obtaining the services, as set forth in the plan created under RCW 72.09.370(2), for up to five years. The services may include coordination of mental health services, assistance with unfunded medical expenses, obtaining chemical dependency treatment, housing, employment services, educational or vocational training, independent living skills, parenting education, anger management services, and such other services as the case manager deems necessary.

(3) The legislature intends that funds appropriated for the purposes of RCW 72.09.370, 71.05.145, and 71.05.212, and this section and distributed to the regional support networks are to supplement and not to supplant general funding. Funds appropriated to implement RCW 72.09.370, 71.05.145, and 71.05.212, and this section are not to be considered available resources as defined in RCW 71.24.025 and are not subject to the priorities, terms, or conditions in the appropriations act established pursuant to RCW 71.24.035.

(4) The offender reentry community safety program was formerly known as the community integration assistance program. [2009 c 319 § 1; 1999 c 214 § 9.]

Intent—Effective date—1999 c 214: See notes following RCW 72.09.370.

71.24.480 Offenders with mental illness who are believed to be dangerous—Limitation on liability due to treatment—Reporting requirements. (1) A licensed service provider or regional support network, acting in the course of the provider's or network's duties under this chapter, is not liable for civil damages resulting from the injury or death of another caused by a participant in the offender reentry community safety program who is a client of the provider or network, unless the act or omission of the provider or network constitutes:

(a) Gross negligence;

(b) Willful or wanton misconduct; or

(c) A breach of the duty to warn of and protect from a client's threatened violent behavior if the client has communicated a serious threat of physical violence against a reasonably ascertainable victim or victims.

(2) In addition to any other requirements to report violations, the licensed service provider and regional support network shall report an offender's expressions of intent to harm or other predatory behavior, regardless of whether there is an ascertainable victim, in progress reports and other established processes that enable courts and supervising entities to assess and address the progress and appropriateness of treatment.

(3) A licensed service provider's or regional support network's mere act of treating a participant in the offender reentry community safety program is not negligence. Nothing in this subsection alters the licensed service provider's or regional support network's normal duty of care with regard to the client.

(4) The limited liability provided by this section applies only to the conduct of licensed service providers and regional support networks and does not apply to conduct of the state.

(5) For purposes of this section, "participant in the offender reentry community safety program" means a person who has been identified under RCW 72.09.370 as an offender who: (a) Is reasonably believed to be dangerous to himself or herself or others; and (b) has a mental disorder. [2009 c 319 § 2; 2002 c 173 § 1.]

Chapter 71.32 RCW
MENTAL HEALTH ADVANCE DIRECTIVES

Sections

71.32.140 Refusal of admission to inpatient treatment—Effect of directive.
71.32.250 Long-term care facility residents—Readmission after inpatient mental health treatment—Evaluation, report to legislature.
71.32.260 Form.
71.32.902 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. *(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*

71.32.140 Refusal of admission to inpatient treatment—Effect of directive. (1) A principal who:

(a) Chose not to be able to revoke his or her directive during any period of incapacity;

(b) Consented to voluntary admission to inpatient mental health treatment, or authorized an agent to consent on the principal's behalf; and

(c) At the time of admission to inpatient treatment, refuses to be admitted,

may only be admitted into inpatient mental health treatment under subsection (2) of this section.

(2) A principal may only be admitted to inpatient mental health treatment under his or her directive if, prior to admission, a member of the treating facility's professional staff who is a physician or psychiatric advanced registered nurse practitioner:

(a) Evaluates the principal's mental condition, including a review of reasonably available psychiatric and psychological history, diagnosis, and treatment needs, and determines, in conjunction with another health care provider or mental health professional, that the principal is incapacitated;

(b) Obtains the informed consent of the agent, if any, designated in the directive;

(c) Makes a written determination that the principal needs an inpatient evaluation or is in need of inpatient treatment and that the evaluation or treatment cannot be accomplished in a less restrictive setting; and

(d) Documents in the principal's medical record a summary of the physician's or psychiatric advanced registered nurse practitioner's findings and recommendations for treatment or evaluation.

(3) In the event the admitting physician is not a psychiatrist, or the advanced registered nurse practitioner is not a psychiatric advanced registered nurse practitioner, the principal shall receive a complete psychological assessment by a mental health professional within twenty-four hours of admission to determine the continued need for inpatient evaluation or treatment.

(4)(a) If it is determined that the principal has capacity, then the principal may only be admitted to, or remain in, inpatient treatment if he or she consents at the time or is detained under the involuntary treatment provisions of chapter 70.96A, 71.05, or 71.34 RCW.

(b) If a principal who is determined by two health care providers or one mental health professional and one health care provider to be incapacitated continues to refuse inpatient treatment, the principal may immediately seek injunctive relief for release from the facility.

(5) If, at the end of the period of time that the principal or the principal's agent, if any, has consented to voluntary inpatient treatment, but no more than fourteen days after admission, the principal has not regained capacity or has regained capacity but refuses to consent to remain for additional treatment, the principal must be released during reasonable daylight hours, unless detained under chapter 70.96A, 71.05, or 71.34 RCW.

(6)(a) Except as provided in (b) of this subsection, any principal who is voluntarily admitted to inpatient mental health treatment under this chapter shall have all the rights provided to individuals who are voluntarily admitted to inpatient treatment under chapter 71.05, 71.34, or 72.23 RCW.

(b) Notwithstanding RCW 71.05.050 regarding consent to inpatient treatment for a specified length of time, the choices an incapacitated principal expressed in his or her directive shall control, provided, however, that a principal who takes action demonstrating a desire to be discharged, in addition to making statements requesting to be discharged, shall be discharged, and no principal shall be restrained in any way in order to prevent his or her discharge. Nothing in this subsection shall be construed to prevent detention and evaluation for civil commitment under chapter 71.05 RCW.

(7) Consent to inpatient admission in a directive is effective only while the professional person, health care provider, and health care facility are in substantial compliance with the material provisions of the directive related to inpatient treatment. [2009 c 217 § 12; 2004 c 39 § 2; 2003 c 283 § 14.]

Finding—Intent—2004 c 39: "Questions have been raised about the intent of the legislature in cross-referencing RCW 71.05.050 without further clarification in RCW 71.32.140. The legislature finds that because RCW 71.05.050 pertains to a variety of rights as well as the procedures for detaining a voluntary patient for evaluation for civil commitment, and the legislature intended only to address the right of release upon request, there is ambiguity as to whether an incapacitated person admitted pursuant to his or her mental health advance directive and seeking release can be held for evaluation for civil commitment under chapter 71.05 RCW. The legislature therefore intends to clarify the ambiguity without making any change to its intended policy as laid out in chapter 71.32 RCW." [2004 c 39 § 1.]

71.32.250 Long-term care facility residents—Readmission after inpatient mental health treatment—Evaluation, report to legislature. (1) If a principal who is a resident of a long-term care facility is admitted to inpatient mental health treatment pursuant to his or her directive, the principal shall be allowed to be readmitted to the same long-term care facility as if his or her inpatient admission had been for a physical condition on the same basis that the principal would be readmitted under state or federal statute or rule when:

(a) The treating facility's professional staff determine that inpatient mental health treatment is no longer medically necessary for the resident. The determination shall be made in writing by a psychiatrist, psychiatric advanced registered nurse practitioner, or a mental health professional and either (i) a physician or (ii) psychiatric advanced registered nurse practitioner; or

(b) The person's consent to admission in his or her directive has expired.

(2)(a) If the long-term care facility does not have a bed available at the time of discharge, the treating facility may discharge the resident, in consultation with the resident and agent if any, and in accordance with a medically appropriate discharge plan, to another long-term care facility.

(b) This section shall apply to inpatient mental health treatment admission of long-term care facility residents, regardless of whether the admission is directly from a facility, hospital emergency room, or other location.

(c) This section does not restrict the right of the resident to an earlier release from the inpatient treatment facility. This section does not restrict the right of a long-term care facility to initiate transfer or discharge of a resident who is readmitted pursuant to this section, provided that the facility has complied with the laws governing the transfer or discharge of a resident.

(3) The joint legislative audit and review committee shall conduct an evaluation of the operation and impact of this section. The committee shall report its findings to the appropriate committees of the legislature by December 1, 2004. [2009 c 217 § 13; 2003 c 283 § 25.]

71.32.260 Form. The directive shall be in substantially the following form:

Mental Health Advance Directive

NOTICE TO PERSONS
CREATING A MENTAL HEALTH ADVANCE DIRECTIVE

This is an important legal document. It creates an advance directive for mental health treatment. Before signing this document you should know these important facts:

(1) This document is called an advance directive and allows you to make decisions in advance about your mental health treatment, including medications, short-term admission to inpatient treatment and electroconvulsive therapy.

YOU DO NOT HAVE TO FILL OUT OR SIGN THIS FORM.
IF YOU DO NOT SIGN THIS FORM, IT WILL NOT TAKE EFFECT.

If you choose to complete and sign this document, you may still decide to leave some items blank.

(2) You have the right to appoint a person as your agent to make treatment decisions for you. You must notify your agent that you have appointed him or her as an agent. The person you appoint has a duty to act consistently with your wishes made known by you. If your agent does not know what your wishes are, he or she has a duty to act in your best interest. Your agent has the right to withdraw from the appointment at any time.

(3) The instructions you include with this advance directive and the authority you give your agent to act will only become effective under the conditions you select in this document. You may choose to limit this directive and your agent's authority to times when you are incapacitated or to times when you are exhibiting symptoms or behavior that you specify. You may also make this directive effective immediately. No matter when you choose to make this directive effective, your treatment providers must still seek your informed consent at all times that you have capacity to give informed consent.

(4) You have the right to revoke this document in writing at any time you have capacity.

YOU MAY NOT REVOKE THIS DIRECTIVE WHEN YOU HAVE BEEN FOUND TO BE INCAPACITATED UNLESS YOU HAVE SPECIFICALLY STATED IN THIS DIRECTIVE THAT YOU WANT IT TO BE REVOCABLE WHEN YOU ARE INCAPACITATED.

(5) This directive will stay in effect until you revoke it unless you specify an expiration date. If you specify an expiration date and you are incapacitated at the time it expires, it will remain in effect until you have capacity to make treatment decisions again unless you chose to be able to revoke it while you are incapacitated and you revoke the directive.

(6) You cannot use your advance directive to consent to civil commitment. The procedures that apply to your advance directive are different than those provided for in the Involuntary Treatment Act. Involuntary treatment is a different process.

(7) If there is anything in this directive that you do not understand, you should ask a lawyer to explain it to you.

(8) You should be aware that there are some circumstances where your provider may not have to follow your directive.

(9) You should discuss any treatment decisions in your directive with your provider.

(10) You may ask the court to rule on the validity of your directive.

PART I.
STATEMENT OF INTENT TO CREATE A
MENTAL HEALTH ADVANCE DIRECTIVE

I, ... being a person with capacity, willfully and voluntarily execute this mental health advance directive so that my choices regarding my mental health care will be carried out in circumstances when I am unable to express my instructions and preferences regarding my mental health care. If a guardian is appointed by a court to make mental health decisions for me, I intend this document to take precedence over all other means of ascertaining my intent.

The fact that I may have left blanks in this directive does not affect its validity in any way. I intend that all completed sections be followed. If I have not expressed a choice, my agent should make the decision that he or she determines is in my best interest. I intend this directive to take precedence over any other directives I have previously executed, to the extent that they are inconsistent with this document, or unless I expressly state otherwise in either document.

I understand that I may revoke this directive in whole or in part if I am a person with capacity. I understand that I cannot revoke this directive if a court, two health care providers, or one mental health professional and one health care provider find that I am an incapacitated person, unless, when I executed this directive, I chose to be able to revoke this directive while incapacitated.

I understand that, except as otherwise provided in law, revocation must be in writing. I understand that nothing in this directive, or in my refusal of treatment to which I consent in this directive, authorizes any health care provider, professional person, health care facility, or agent appointed in this directive to use or threaten to use abuse, neglect, financial exploitation, or abandonment to carry out my directive.

I understand that there are some circumstances where my provider may not have to follow my directive.

PART II.
WHEN THIS DIRECTIVE IS EFFECTIVE

YOU MUST COMPLETE THIS PART FOR YOUR DIRECTIVE TO BE VALID.

I intend that this directive become effective (*YOU MUST CHOOSE ONLY ONE*):

. . . . . Immediately upon my signing of this directive.

. . . . . If I become incapacitated.

. . . . . When the following circumstances, symptoms, or behaviors occur: . . . . . .

. . . . . .

. . . . . .

PART III.
DURATION OF THIS DIRECTIVE

YOU MUST COMPLETE THIS PART FOR YOUR DIRECTIVE TO BE VALID.

I want this directive to (*YOU MUST CHOOSE ONLY ONE*):

. . . . . Remain valid and in effect for an indefinite period of time.

. . . . . Automatically expire . . . . . years from the date it was created.

PART IV.
WHEN I MAY REVOKE THIS DIRECTIVE

YOU MUST COMPLETE THIS PART FOR THIS DIRECTIVE TO BE VALID.

I intend that I be able to revoke this directive (*YOU MUST CHOOSE ONLY ONE*):

. . . . . Only when I have capacity.

I understand that choosing this option means I may only revoke this directive if I have capacity. I further understand that if I choose this option and become incapacitated while this directive is in effect, I may receive treatment that I specify in this directive, even if I object at the time.

. . . . . Even if I am incapacitated.

I understand that choosing this option means that I may revoke this directive even if I am incapacitated. I further understand that if I choose this option and revoke this directive while I am incapacitated I may not receive treatment that I specify in this directive, even if I want the treatment.

PART V.
PREFERENCES AND INSTRUCTIONS ABOUT TREATMENT, FACILITIES, AND PHYSICIANS OR PSYCHIATRIC ADVANCED REGISTERED NURSE PRACTITIONERS

A. Preferences and Instructions About Physician(s) or Psychiatric Advanced Registered Nurse Practitioner(s) to be Involved in My Treatment

I would like the physician(s) or psychiatric advanced registered nurse practitioner(s) named below to be involved in my treatment decisions:

Dr. or PARNP . . . . . Contact information: . . . . . .

Dr. or PARNP . . . . . Contact information: . . . . . .

I do not wish to be treated by Dr. or PARNP . . . . . .

B. Preferences and Instructions About Other Providers

I am receiving other treatment or care from providers who I feel have an impact on my mental health care. I would like the following treatment provider(s) to be contacted when this directive is effective:

Name . . . . . Profession . . . . . Contact information. . . . . .

Name . . . . . Profession . . . . . Contact information. . . . . .

C. Preferences and Instructions About Medications for Psychiatric Treatment (*initial and complete all that apply*)

. . . . . I consent, and authorize my agent (if appointed) to consent, to the following medications: . . . . . .

. . . . . I do not consent, and I do not authorize my agent (if appointed) to consent, to the administration of the following medications: . . . . . .

. . . . . I am willing to take the medications excluded above if my only reason for excluding them is the side effects which include. . . . . .
and these side effects can be eliminated by dosage adjustment or other means

. . . . . I am willing to try any other medication the hospital doctor or psychiatric advanced registered nurse practitioner recommends

. . . . . I am willing to try any other medications my outpatient doctor or psychiatric advanced registered nurse practitioner recommends

. . . . . I do not want to try any other medications.

Medication Allergies

I have allergies to, or severe side effects from, the following: . . . . . .

. . . . . .

Other Medication Preferences or Instructions

. . . . . I have the following other preferences or instructions about medications . . . . . .

. . . . . .

D. Preferences and Instructions About Hospitalization and Alternatives

(*initial all that apply and, if desired, rank "1" for first choice, "2" for second choice, and so on*)

. . . . . In the event my psychiatric condition is serious enough to require 24-hour care and I have no physical conditions that require immediate access to emergency medical care, I prefer to receive this care in programs/facilities designed as alternatives to psychiatric hospitalizations.

. . . . . I would also like the interventions below to be tried before hospitalization is considered:

. . . . . Calling someone or having someone call me when needed.

Name: . . . . . Telephone: . . . . . .

. . . . . Staying overnight with someone

Name: . . . . . Telephone: . . . . . .

. . . . . Having a mental health service provider come to see me

. . . . . Going to a crisis triage center or emergency room

. . . . . Staying overnight at a crisis respite (temporary) bed

. . . . . Seeing a service provider for help with psychiatric medications

. . . . . Other, specify: . . . . . .

Authority to Consent to Inpatient Treatment

I consent, and authorize my agent (if appointed) to consent, to voluntary admission to inpatient mental health treatment for . . . . . days (*not to exceed 14 days*)

(Sign one):

. . . . . If deemed appropriate by my agent (if appointed) and treating physician or psychiatric advanced registered nurse practitioner

. . . . . .

(Signature)

or

. . . . . Under the following circumstances (specify symptoms, behaviors, or circumstances that indicate the need for hospitalization) . . . . . .

. . . . . .

(Signature)

. . . . . I do **not** consent, or authorize my agent (if appointed) to consent, to inpatient treatment

. . . . . .

(Signature)

Hospital Preferences and Instructions

If hospitalization is required, I prefer the following hospitals: . . . . . .

I do not consent to be admitted to the following hospitals: . . . . . .

E. Preferences and Instructions About Preemergency

I would like the interventions below to be tried before use of seclusion or restraint is considered (*initial all that apply*):

. . . . . "Talk me down" one-on-one

. . . . . More medication

. . . . . Time out/privacy

. . . . . Show of authority/force

. . . . . Shift my attention to something else

. . . . . Set firm limits on my behavior

. . . . . Help me to discuss/vent feelings

. . . . . Decrease stimulation

. . . . . Offer to have neutral person settle dispute

. . . . . Other, specify . . . . . .

F. Preferences and Instructions About Seclusion, Restraint, and Emergency Medications

If it is determined that I am engaging in behavior that requires seclusion, physical restraint, and/or emergency use of medication, I prefer these interventions in the order I have chosen (*choose "1" for first choice, "2" for second choice, and so on*):

. . . . . Seclusion

. . . . . Seclusion and physical restraint (combined)

. . . . . Medication by injection

. . . . . Medication in pill or liquid form

In the event that my attending physician or psychiatric advanced registered nurse practitioner decides to use medication in response to an emergency situation after due consideration of my preferences and instructions for emergency treatments stated above, I expect the choice of medication to reflect any preferences and instructions I have expressed in Part III C of this form. The preferences and instructions I express in this section regarding medication in emergency situations do not constitute consent to use of the medication for nonemergency treatment.

G. Preferences and Instructions About Electroconvulsive Therapy (ECT or Shock Therapy)

My wishes regarding electroconvulsive therapy are (*sign one*):

. . . . . I do not consent, nor authorize my agent (if appointed) to consent, to the administration of electroconvulsive therapy

. . . . . .
(Signature)

. . . . . I consent, and authorize my agent (if appointed) to consent, to the administration of electroconvulsive therapy

. . . . . .
(Signature)

. . . . . I consent, and authorize my agent (if appointed) to consent, to the administration of electroconvulsive therapy, but only under the following conditions: . . . . . .

. . . . . .

. . . . . .
(Signature)

H. Preferences and Instructions About Who is Permitted to Visit

If I have been admitted to a mental health treatment facility, the following people are not permitted to visit me there:

Name: . . . . . .

Name: . . . . . .

Name: . . . . . .

I understand that persons not listed above may be permitted to visit me.

I. Additional Instructions About My Mental Health Care

Other instructions about my mental health care: . . . . . .

. . . . . .

In case of emergency, please contact:

Name: . . . . . Address: . . . . . .

Work telephone: . . . . . Home telephone: . . . . . .

Physician or Psychiatric Advanced Registered Nurse Practitioner: . . . . . Address: . . . . . .

Telephone: . . . . . .

The following may help me to avoid a hospitalization: . . . . . .

. . . . . .

I generally react to being hospitalized as follows: . . . . . .

. . . . . .

Staff of the hospital or crisis unit can help me by doing the following: . . . . . .

. . . . . .

. . . . . .

J. Refusal of Treatment

I do not consent to any mental health treatment.

. . . . . .
(Signature)

PART VI.
DURABLE POWER OF ATTORNEY (APPOINTMENT OF MY AGENT)

(*Fill out this part only if you wish to appoint an agent or nominate a guardian.*)

I authorize an agent to make mental health treatment decisions on my behalf. The authority granted to my agent includes the right to consent, refuse consent, or withdraw consent to any mental health care, treatment, service, or procedure, consistent with any instructions and/or limitations I have set forth in this directive. I intend that those decisions should be made in accordance with my expressed wishes as set forth in this document. If I have not expressed a choice in this document **and my agent does not otherwise know my wishes**, I authorize my agent to make the decision that my agent determines is in my best interest. This agency shall not be affected by my incapacity. Unless I state otherwise in this durable power of attorney, I may revoke it unless prohibited by other state law.

A. Designation of an Agent

I appoint the following person as my agent to make mental health treatment decisions for me as authorized in this document and request that this person be notified immediately when this directive becomes effective:

Name: . . . . . Address: . . . . . .

Work telephone: . . . . . Home telephone: . . . . . .

Relationship: . . . . . .

B. Designation of Alternate Agent

If the person named above is unavailable, unable, or refuses to serve as my agent, or I revoke that person's authority to serve as my agent, I hereby appoint the following person as my alternate agent and request that this person be notified immediately when this directive becomes effective or when my original agent is no longer my agent:

Name: . . . . . Address: . . . . . .

Work telephone: . . . . . Home telephone: . . . . . .

Relationship: . . . . . .

C. When My Spouse is My Agent (*initial if desired*)

. . . . . If my spouse is my agent, that person shall remain my agent even if we become legally separated or our marriage is dissolved, unless there is a court order to the contrary or I have remarried.

D. Limitations on My Agent's Authority

I do not grant my agent the authority to consent on my behalf to the following:

. . . . . .

. . . . . .

E. Limitations on My Ability to Revoke this Durable Power of Attorney

I choose to limit my ability to revoke this durable power of attorney as follows:

. . . . . .

. . . . . .

F. Preference as to Court-Appointed Guardian

In the event a court appoints a guardian who will make decisions regarding my mental health treatment, I **nominate** the following person **as my guardian**:

Name: . . . . . Address: . . . . . .

Work telephone: . . . . . Home telephone: . . . . . .

Relationship: . . . . . .

The appointment of a guardian of my estate or my person or any other decision maker shall not give the guardian or decision maker the power to revoke, suspend, or terminate this directive or the powers of my agent, except as authorized by law.

. . . . . .
(Signature required if nomination is made)

PART VII.
OTHER DOCUMENTS

(*Initial all that apply*)

I have executed the following documents that include the power to make decisions regarding health care services for myself:

. . . . . Health care power of attorney (chapter 11.94 RCW)

. . . . . "Living will" (Health care directive; chapter 70.122 RCW)

. . . . . I have appointed more than one agent. I understand that the most recently appointed agent controls except as stated below:

. . . . . .

PART VIII.
NOTIFICATION OF OTHERS AND CARE OF PERSONAL AFFAIRS

(*Fill out this part only if you wish to provide nontreatment instructions.*)

I understand the preferences and instructions in this part are **NOT** the responsibility of my treatment provider and that no treatment provider is required to act on them.

A. Who Should Be Notified

I desire my agent to notify the following individuals as soon as possible when this directive becomes effective:

Name: . . . . . Address: . . . . . .

Day telephone: . . . . . Evening telephone: . . . . . .

Name: . . . . . Address: . . . . . .

Day telephone: . . . . . Evening telephone: . . . . . .

B. Preferences or Instructions About Personal Affairs

I have the following preferences or instructions about my personal affairs (e.g., care of dependents, pets, household) if I am admitted to a mental health treatment facility:

. . . . . .

. . . . . .

C. Additional Preferences and Instructions:

. . . . . .

. . . . . .

. . . . . .

. . . . . .

PART IX.
SIGNATURE

By signing here, I indicate that I understand the purpose and effect of this document and that I am giving my informed consent to the treatments and/or admission to which I have consented or authorized my agent to consent in this directive. I intend that my consent in this directive be construed as being consistent with the elements of informed consent under chapter 7.70 RCW.

Signature: . . . . . Date: . . . . . .

Printed Name: . . . . . .

This directive was signed and declared by the "Principal," to be his or her directive, in our presence who, at his or her request, have signed our names below as witnesses. We declare that, at the time of the creation of this instrument, the Principal is personally known to us, and, according to our best knowledge and belief, has capacity at this time and does not appear to be acting under duress, undue influence, or fraud. We further declare that none of us is:

(A) A person designated to make medical decisions on the principal's behalf;

(B) A health care provider or professional person directly involved with the provision of care to the principal at the time the directive is executed;

(C) An owner, operator, employee, or relative of an owner or operator of a health care facility or long-term care facility in which the principal is a patient or resident;

(D) A person who is related by blood, marriage, or adoption to the person, or with whom the principal has a dating relationship as defined in RCW 26.50.010;

(E) An incapacitated person;

(F) A person who would benefit financially if the principal undergoes mental health treatment; or

(G) A minor.

Witness 1: Signature: . . . . . Date: . . . . . .

Printed Name: . . . . . .

Telephone: . . . . . Address: . . . . . .

Witness 2: Signature: . . . . . Date: . . . . . .

Printed Name: . . . . . .

Telephone: . . . . . Address: . . . . . .

PART X.
RECORD OF DIRECTIVE

I have given a copy of this directive to the following persons: . . . . . .

. . . . . .

DO NOT FILL OUT PART XI UNLESS YOU INTEND TO REVOKE
THIS DIRECTIVE IN PART OR IN WHOLE

PART XI.
REVOCATION OF THIS DIRECTIVE

(*Initial any that apply*):

. . . . . I am revoking the following part(s) of this directive (specify): . . . . . .

. . . . . .

. . . . . I am revoking all of this directive.

By signing here, I indicate that I understand the purpose and effect of my revocation and that no person is bound by any revoked provision(s). I intend this revocation to be interpreted as if I had never completed the revoked provision(s).

Signature: . . . . . Date: . . . . . .

Printed Name: . . . . . .

DO NOT SIGN THIS PART UNLESS YOU INTEND TO REVOKE THIS DIRECTIVE IN PART OR IN WHOLE

[2009 c 217 § 14; 2003 c 283 § 26.]

71.32.902 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. ***(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 161.]

Chapter 71.34 RCW
MENTAL HEALTH SERVICES FOR MINORS

Sections

71.34.355 Rights of minors undergoing treatment—Posting.
71.34.720 Examination and evaluation of minor approved for inpatient admission—Referral to chemical dependency treatment program—Right to communication, exception—Evaluation and treatment period.
71.34.730 Petition for fourteen-day commitment—Requirements.
71.34.740 Commitment hearing—Requirements—Findings by court—Commitment—Release.
71.34.750 Petition for one hundred eighty-day commitment—Hearing—Requirements—Findings by court—Commitment order—Release—Successive commitments.
71.34.770 Release of minor—Conditional release—Discharge.

71.34.355 Rights of minors undergoing treatment—Posting. Absent a risk to self or others, minors treated under this chapter have the following rights, which shall be prominently posted in the evaluation and treatment facility:

(1) To wear their own clothes and to keep and use personal possessions;

(2) To keep and be allowed to spend a reasonable sum of their own money for canteen expenses and small purchases;

(3) To have individual storage space for private use;

(4) To have visitors at reasonable times;

(5) To have reasonable access to a telephone, both to make and receive confidential calls;

(6) To have ready access to letter-writing materials, including stamps, and to send and receive uncensored correspondence through the mails;

(7) To discuss treatment plans and decisions with mental health professionals;

(8) To have the right to adequate care and individualized treatment;

(9) Not to consent to the performance of electro-convulsive treatment or surgery, except emergency life-saving surgery, upon him or her, and not to have electro-convulsive

treatment or nonemergency surgery in such circumstance unless ordered by a court pursuant to a judicial hearing in which the minor is present and represented by counsel, and the court shall appoint a psychiatrist, psychologist, psychiatric advanced registered nurse practitioner, or physician designated by the minor or the minor's counsel to testify on behalf of the minor. The minor's parent may exercise this right on the minor's behalf, and must be informed of any impending treatment;

(10) Not to have psychosurgery performed on him or her under any circumstances. [2009 c 217 § 15; 1985 c 354 § 16. Formerly RCW 71.34.160.]

71.34.720 Examination and evaluation of minor approved for inpatient admission—Referral to chemical dependency treatment program—Right to communication, exception—Evaluation and treatment period. (1) Each minor approved by the facility for inpatient admission shall be examined and evaluated by a children's mental health specialist as to the child's mental condition and by a physician or psychiatric advanced registered nurse practitioner as to the child's physical condition within twenty-four hours of admission. Reasonable measures shall be taken to ensure medical treatment is provided for any condition requiring immediate medical attention.

(2) If, after examination and evaluation, the children's mental health specialist and the physician or psychiatric advanced registered nurse practitioner determine that the initial needs of the minor would be better served by placement in a chemical dependency treatment facility, then the minor shall be referred to an approved treatment program defined under RCW 70.96A.020.

(3) The admitting facility shall take reasonable steps to notify immediately the minor's parent of the admission.

(4) During the initial seventy-two hour treatment period, the minor has a right to associate or receive communications from parents or others unless the professional person in charge determines that such communication would be seriously detrimental to the minor's condition or treatment and so indicates in the minor's clinical record, and notifies the minor's parents of this determination. In no event may the minor be denied the opportunity to consult an attorney.

(5) If the evaluation and treatment facility admits the minor, it may detain the minor for evaluation and treatment for a period not to exceed seventy-two hours from the time of provisional acceptance. The computation of such seventy-two hour period shall exclude Saturdays, Sundays, and holidays. This initial treatment period shall not exceed seventy-two hours except when an application for voluntary inpatient treatment is received or a petition for fourteen-day commitment is filed.

(6) Within twelve hours of the admission, the facility shall advise the minor of his or her rights as set forth in this chapter. [2009 c 217 § 16; 1991 c 364 § 12; 1985 c 354 § 6. Formerly RCW 71.34.060.]

Findings—Construction—Conflict with federal requirements—1991 c 364: See notes following RCW 70.96A.020.

71.34.730 Petition for fourteen-day commitment—Requirements. (1) The professional person in charge of an evaluation and treatment facility where a minor has been admitted involuntarily for the initial seventy-two hour treatment period under this chapter may petition to have a minor committed to an evaluation and treatment facility for fourteen-day diagnosis, evaluation, and treatment.

If the professional person in charge of the treatment and evaluation facility does not petition to have the minor committed, the parent who has custody of the minor may seek review of that decision in court. The parent shall file notice with the court and provide a copy of the treatment and evaluation facility's report.

(2) A petition for commitment of a minor under this section shall be filed with the superior court in the county where the minor is residing or being detained.

(a) A petition for a fourteen-day commitment shall be signed by (i) two physicians, (ii) two psychiatric advanced registered nurse practitioners, (iii) a mental health professional and either a physician or a psychiatric advanced registered nurse practitioner, or (iv) a physician and a psychiatric advanced registered nurse practitioner. The person signing the petition must have examined the minor, and the petition must contain the following:

(A) The name and address of the petitioner;

(B) The name of the minor alleged to meet the criteria for fourteen-day commitment;

(C) The name, telephone number, and address if known of every person believed by the petitioner to be legally responsible for the minor;

(D) A statement that the petitioner has examined the minor and finds that the minor's condition meets required criteria for fourteen-day commitment and the supporting facts therefor;

(E) A statement that the minor has been advised of the need for voluntary treatment but has been unwilling or unable to consent to necessary treatment;

(F) A statement that the minor has been advised of the loss of firearm rights if involuntarily committed;

(G) A statement recommending the appropriate facility or facilities to provide the necessary treatment; and

(H) A statement concerning whether a less restrictive alternative to inpatient treatment is in the best interests of the minor.

(b) A copy of the petition shall be personally delivered to the minor by the petitioner or petitioner's designee. A copy of the petition shall be sent to the minor's attorney and the minor's parent. [2009 c 293 § 6; 2009 c 217 § 17; 1995 c 312 § 54; 1985 c 354 § 7. Formerly RCW 71.34.070.]

Reviser's note: This section was amended by 2009 c 217 § 17 and by 2009 c 293 § 6, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Short title—1995 c 312: See note following RCW 13.32A.010.

71.34.740 Commitment hearing—Requirements—Findings by court—Commitment—Release. (1) A commitment hearing shall be held within seventy-two hours of the minor's admission, excluding Saturday, Sunday, and holidays, unless a continuance is requested by the minor or the minor's attorney.

(2) The commitment hearing shall be conducted at the superior court or an appropriate place at the facility in which the minor is being detained.

(3) At the commitment hearing, the evidence in support of the petition shall be presented by the county prosecutor.

(4) The minor shall be present at the commitment hearing unless the minor, with the assistance of the minor's attorney, waives the right to be present at the hearing.

(5) If the parents are opposed to the petition, they may be represented at the hearing and shall be entitled to court-appointed counsel if they are indigent.

(6) At the commitment hearing, the minor shall have the following rights:

(a) To be represented by an attorney;

(b) To present evidence on his or her own behalf;

(c) To question persons testifying in support of the petition.

(7) The court at the time of the commitment hearing and before an order of commitment is entered shall inform the minor both orally and in writing that the failure to make a good faith effort to seek voluntary treatment as provided in RCW 71.34.730 will result in the loss of his or her firearm rights if the minor is subsequently detained for involuntary treatment under this section.

(8) If the minor has received medication within twenty-four hours of the hearing, the court shall be informed of that fact and of the probable effects of the medication.

(9) Rules of evidence shall not apply in fourteen-day commitment hearings.

(10) For a fourteen-day commitment, the court must find by a preponderance of the evidence that:

(a) The minor has a mental disorder and presents a "likelihood of serious harm" or is "gravely disabled";

(b) The minor is in need of evaluation and treatment of the type provided by the inpatient evaluation and treatment facility to which continued inpatient care is sought or is in need of less restrictive alternative treatment found to be in the best interests of the minor; and

(c) The minor is unwilling or unable in good faith to consent to voluntary treatment.

(11) If the court finds that the minor meets the criteria for a fourteen-day commitment, the court shall either authorize commitment of the minor for inpatient treatment or for less restrictive alternative treatment upon such conditions as are necessary. If the court determines that the minor does not meet the criteria for a fourteen-day commitment, the minor shall be released.

(12) Nothing in this section prohibits the professional person in charge of the evaluation and treatment facility from releasing the minor at any time, when, in the opinion of the professional person in charge of the facility, further inpatient treatment is no longer necessary. The release may be subject to reasonable conditions if appropriate.

Whenever a minor is released under this section, the professional person in charge shall within three days, notify the court in writing of the release.

(13) A minor who has been committed for fourteen days shall be released at the end of that period unless a petition for one hundred eighty-day commitment is pending before the court. [2009 c 293 § 7; 1985 c 354 § 8. Formerly RCW 71.34.080.]

71.34.750 Petition for one hundred eighty-day commitment—Hearing—Requirements—Findings by court—Commitment order—Release—Successive commitments. (1) At any time during the minor's period of fourteen-day commitment, the professional person in charge may petition the court for an order requiring the minor to undergo an additional one hundred eighty-day period of treatment. The evidence in support of the petition shall be presented by the county prosecutor unless the petition is filed by the professional person in charge of a state-operated facility in which case the evidence shall be presented by the attorney general.

(2) The petition for one hundred eighty-day commitment shall contain the following:

(a) The name and address of the petitioner or petitioners;

(b) The name of the minor alleged to meet the criteria for one hundred eighty-day commitment;

(c) A statement that the petitioner is the professional person in charge of the evaluation and treatment facility responsible for the treatment of the minor;

(d) The date of the fourteen-day commitment order; and

(e) A summary of the facts supporting the petition.

(3) The petition shall be supported by accompanying affidavits signed by (a) two examining physicians, one of whom shall be a child psychiatrist, or two psychiatric advanced registered nurse practitioners, one of whom shall be a child and adolescent or family psychiatric advanced registered nurse practitioner, (b) one children's mental health specialist and either an examining physician or a psychiatric advanced registered nurse practitioner, or (c) an examining physician and a psychiatric advanced registered nurse practitioner, one of which needs to be a child psychiatrist or a child and adolescent psychiatric nurse practitioner. The affidavits shall describe in detail the behavior of the detained minor which supports the petition and shall state whether a less restrictive alternative to inpatient treatment is in the best interests of the minor.

(4) The petition for one hundred eighty-day commitment shall be filed with the clerk of the court at least three days before the expiration of the fourteen-day commitment period. The petitioner or the petitioner's designee shall within twenty-four hours of filing serve a copy of the petition on the minor and notify the minor's attorney and the minor's parent. A copy of the petition shall be provided to such persons at least twenty-four hours prior to the hearing.

(5) At the time of filing, the court shall set a date within seven days for the hearing on the petition. The court may continue the hearing upon the written request of the minor or the minor's attorney for not more than ten days. The minor or the parents shall be afforded the same rights as in a fourteen-day commitment hearing. Treatment of the minor shall continue pending the proceeding.

(6) For one hundred eighty-day commitment, the court must find by clear, cogent, and convincing evidence that the minor:

(a) Is suffering from a mental disorder;

(b) Presents a likelihood of serious harm or is gravely disabled; and

(c) Is in need of further treatment that only can be provided in a one hundred eighty-day commitment.

(7) If the court finds that the criteria for commitment are met and that less restrictive treatment in a community setting is not appropriate or available, the court shall order the minor

committed for further inpatient treatment to the custody of the secretary or to a private treatment and evaluation facility if the minor's parents have assumed responsibility for payment for the treatment. If the court finds that a less restrictive alternative is in the best interest of the minor, the court shall order less restrictive alternative treatment upon such conditions as necessary.

If the court determines that the minor does not meet the criteria for one hundred eighty-day commitment, the minor shall be released.

(8) Successive one hundred eighty-day commitments are permissible on the same grounds and under the same procedures as the original one hundred eighty-day commitment. Such petitions shall be filed at least five days prior to the expiration of the previous one hundred eighty-day commitment order. [2009 c 217 § 18; 1985 c 354 § 9. Formerly RCW 71.34.090.]

71.34.770 Release of minor—Conditional release—Discharge. (1) The professional person in charge of the inpatient treatment facility may authorize release for the minor under such conditions as appropriate. Conditional release may be revoked pursuant to RCW 71.34.780 if leave conditions are not met or the minor's functioning substantially deteriorates.

(2) Minors may be discharged prior to expiration of the commitment period if the treating physician, psychiatric advanced registered nurse practitioner, or professional person in charge concludes that the minor no longer meets commitment criteria. [2009 c 217 § 19; 1985 c 354 § 12. Formerly RCW 71.34.120.]

Title 71A

DEVELOPMENTAL DISABILITIES

Chapters

71A.12 State services.
71A.20 Residential habilitation centers.
71A.24 Intensive behavior support services.

Chapter 71A.12 RCW
STATE SERVICES

Sections

71A.12.161 Individual and family services program—Rules.

71A.12.161 Individual and family services program—Rules. (1) The individual and family services program for individuals eligible to receive services under this title is established. This program replaces family support opportunities, traditional family support, and the flexible family support pilot program. The department shall transfer funding associated with these existing family support programs to the individual and family services program and shall operate the program within available funding. The services provided under the individual and family services program shall be funded by state funding without benefit of federal match.

(2) The department shall adopt rules to implement this section. The rules shall provide:

(a) That eligibility to receive services in the individual and family services program be determined solely by an assessment of individual need;

(b) For service priority levels to be developed that specify a maximum amount of dollars for each person per level per year;

(c) That the dollar caps for each service priority level be adjusted by the vendor rate increases authorized by the legislature; and

(d) That the following services be available under the program:

(i) Respite care;
(ii) Therapies;
(iii) Architectural and vehicular modifications;
(iv) Equipment and supplies;
(v) Specialized nutrition and clothing;
(vi) Excess medical costs not covered by another source;
(vii) Copays for medical and therapeutic services;
(viii) Transportation;
(ix) Training;
(x) Counseling;
(xi) Behavior management;
(xii) Parent/sibling education;
(xiii) Recreational opportunities; and
(xiv) Community services grants.

(3) In addition to services provided for the service priority levels under subsections (1) and (2) of this section, the department shall provide for:

(a) One-time exceptional needs and emergency needs for individuals and families not receiving individual and family services annual grants to assist individuals and families who experience a short-term crisis; and

(b) Respite services based on the department's assessment for:

(i) A parent who provides personal care in the home to his or her adult son or daughter with developmental disabilities; or

(ii) A family member who replaces the parent as the primary caregiver, resides with, and provides personal care in the home for the adult with developmental disabilities.

(4) If a person has more complex needs, a family is experiencing a more prolonged crisis, or it is determined a person needs additional services, the department shall assess the individual to determine if placement in a waiver program would be appropriate. [2009 c 312 § 1; 2007 c 283 § 2.]

Findings—Intent—2007 c 283: "(1) The legislature finds that:

(a) A developmental disability is a natural part of human life, and the presence of a developmental disability in the life of a person does not diminish the person's rights or opportunity to participate fully in the life of the local community;

(b) Investing in family members who have children and adults living in the family home preserves a valuable natural support system for the individual with a developmental disability and is also cost-effective for the state of Washington;

(c) Providing support services to families can help maintain the well-being of the family and stabilize the family unit.

(2) It is the intent of the legislature:

(a) To partner with families as care providers for children with developmental disabilities and adults who choose to live in the family home;

(b) That individual and family services be centered on the needs of the person with a developmental disability and the family;

(c) That, to the maximum extent possible, individuals and families

must be given choice of services and exercise control over the resources available to them." [2007 c 283 § 1.]

Short title—2007 c 283: "This act may be known and cited as the Lance Morehouse, Jr. memorial individual and family services act." [2007 c 283 § 3.]

Construction—2007 c 283: "Nothing in this act shall be construed to create an entitlement to services or to create judicial authority to order the provision of services to any person or family if the services are unavailable or unsuitable, the child or family is not eligible for such services, or sufficient funding has not been appropriated for this program." [2007 c 283 § 4.]

Chapter 71A.20 RCW
RESIDENTIAL HABILITATION CENTERS

Sections

71A.20.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. *(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*

71A.20.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. ***(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 162.]

Chapter 71A.24 RCW
INTENSIVE BEHAVIOR SUPPORT SERVICES

Sections

71A.24.005 Intent.
71A.24.010 Role of department—Eligibility.
71A.24.020 Intensive behavior support services—Core team.

71A.24.005 Intent. The legislature recognizes that the number of children who have developmental disabilities along with intense behaviors is increasing, and more families are seeking out-of-home placement for their children.

The legislature intends to create services and to develop supports for these children, family members, and others involved in the children's lives to avoid disruption to families and eliminate the need for out-of-home placement.

The legislature directs the department to maintain a federal waiver through which services may be provided to allow children with developmental disabilities and intense behaviors to maintain permanent and stable familial relationships. The legislature intends for these services to be locally based and offered as early as possible to avoid family disruption and out-of-home placement. [2009 c 194 § 1.]

71A.24.010 Role of department—Eligibility. (1) To the extent funding is appropriated for this purpose, intensive behavior support services may be provided by the department, directly or by contract, to children who have developmental disabilities and intense behaviors and to their families.

(2) The department shall be the lead administrative agency for children's intensive behavior support services and shall:

(a) Collaborate with appropriate parties to develop and implement the intensive in-home support services program within the division of developmental disabilities;

(b) Use best practices and evidence-based practices;

(c) Provide coordination and planning for the implementation and expansion of intensive in-home services;

(d) Contract for the provision of intensive in-home and planned out-of-home services;

(e) Monitor and evaluate services to determine whether the program meets standards identified in the service contracts;

(f) Collect data regarding the number of families served, and costs and outcomes of the program;

(g) Adopt appropriate rules to implement the program;

(h) License out-of-home respite placements on a timely basis; and

(i) Maintain an appropriate staff-to-client ratio.

(3) A child may receive intensive behavior support services when the department has determined that:

(a) The child is under the age of twenty-one;

(b) The child has a developmental disability and has been determined eligible for these services;

(c) The child/family acuity scores are high enough in the assessment conducted by the division of developmental disabilities to indicate the child's behavior puts the child or family at significant risk or is very likely to require an out-of-home placement;

(d) The child meets eligibility for the home and community-based care waiver;

(e) The child resides in his or her family home or is temporarily in an out-of-home placement with a plan to return home;

(f) The family agrees to participate in the program and complete the care and support steps outlined in the completed individual support plan; and

(g) The family is not subject to an unresolved child protective services referral. [2009 c 194 § 2.]

71A.24.020 Intensive behavior support services—Core team. (1) Intensive behavior support services under the program authorized in RCW 71A.24.010 shall be provided through a core team of highly trained individuals, either directly or by contract.

(2) The intensive behavior support services shall be designed to enhance the child's and parent's skills to manage behaviors, increase family and personal self-sufficiency, improve functioning of the family, reduce stress on children and families, and assist the family to locate and use other community services.

(3) The core team shall have the following characteristics and responsibilities:

(a) Expertise in behavior management, therapies, and children's crisis intervention, or the ability to access such specialized expertise;

(b) Ability to coordinate the array of services and supports needed to stabilize the family;

(c) Ability to conduct transition planning as an individual and the individual's family leave the program; and

(d) Ability to authorize and coordinate the services in the family's home and other environments, such as schools and neighborhoods.

(4) The following types of services constitute intensive behavior support services:

(a) Behavior management and consultation;

(b) Environmental adaptations;

(c) Motor vehicle adaptations;

(d) Therapy equipment and supplies;

(e) Personal care;

(f) Specialized diet goods and services;

(g) In-home respite and planned out-of-home respite;

(h) Intensive training to intervene effectively with the child for families and other individuals and partners working with the child in all domains, including the school and individualized education plan team; and

(i) Coordination and planning. [2009 c 194 § 3.]

Title 72

STATE INSTITUTIONS

Chapters

72.01 Administration.
72.09 Department of corrections.
72.23 Public and private facilities for mentally ill.
72.36 Soldiers' and veterans' homes and veterans' cemetery.
72.40 State schools for blind, deaf, sensory handicapped.
72.42 Board of trustees—Center for childhood deafness and hearing loss.
72.64 Labor and employment of prisoners.
72.66 Furloughs for prisoners.

Chapter 72.01 RCW
ADMINISTRATION

Sections

72.01.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. *(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*

72.01.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. ***(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 163.]

Chapter 72.09 RCW
DEPARTMENT OF CORRECTIONS

Sections

72.09.015 Definitions. *(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*
72.09.111 Inmate wages—Deductions—Availability of savings—Employment goals—Recovery of cost of incarceration.
72.09.335 Sex offenders—Treatment opportunity.
72.09.340 Supervision of sex offenders—Public safety—Policy for release plan evaluation and approval—Implementation, publicizing, notice—Rejection of residence locations of felony sex offenders of minor victims—Supervised visitation considerations.
72.09.370 Offenders with mental illness who are believed to be dangerous—Plan for postrelease treatment and support services—Rules.
72.09.480 Inmate funds subject to deductions—Definitions—Exceptions—Child support collection actions.
72.09.712 Prisoner escape, parole, release, community custody or work release placement, or furlough—Notification procedures. *(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*
72.09.713 Prisoner escape, parole, release, community custody or work release placement, or furlough—Notice of work release placement.
72.09.714 Prisoner escape, release, or furlough—Homicide, violent, and sex offenses—Rights of victims and witnesses.
72.09.716 Prisoner escape, release, or furlough—Requests for notification.
72.09.718 Prisoner escape, release, or furlough—Notification as additional requirement.
72.09.720 Prisoner escape, release, or furlough—Consequences of failure to notify.
72.09.800 Repealed.
72.09.906 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. *(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*

72.09.015 Definitions. ***(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*** The definitions in this section apply throughout this chapter.

(1) "Adult basic education" means education or instruction designed to achieve general competence of skills in reading, writing, and oral communication, including English as a second language and preparation and testing services for obtaining a high school diploma or a general equivalency diploma.

(2) "Base level of correctional services" means the minimum level of field services the department of corrections is required by statute to provide for the supervision and monitoring of offenders.

(3) "Community custody" has the same meaning as that provided in RCW 9.94A.030 and also includes community placement and community supervision as defined in RCW 9.94B.020.

(4) "Contraband" means any object or communication the secretary determines shall not be allowed to be: (a) Brought into; (b) possessed while on the grounds of; or (c) sent from any institution under the control of the secretary.

(5) "County" means a county or combination of counties.

(6) "Department" means the department of corrections.

(7) "Earned early release" means earned release as authorized by *RCW 9.94A.728.

(8) "Evidence-based" means a program or practice that has had multiple-site random controlled trials across heterogeneous populations demonstrating that the program or practice is effective in reducing recidivism for the population.

(9) "Extended family visit" means an authorized visit between an inmate and a member of his or her immediate family that occurs in a private visiting unit located at the correctional facility where the inmate is confined.

(10) "Good conduct" means compliance with department rules and policies.

(11) "Good performance" means successful completion of a program required by the department, including an education, work, or other program.

(12) "Immediate family" means the inmate's children, stepchildren, grandchildren, great grandchildren, parents, stepparents, grandparents, great grandparents, siblings, and a person legally married to or in a state registered domestic partnership with an inmate. "Immediate family" does not include an inmate adopted by another inmate or the immediate family of the adopted or adopting inmate.

(13) "Indigent inmate," "indigent," and "indigency" mean an inmate who has less than a ten-dollar balance of disposable income in his or her institutional account on the day a request is made to utilize funds and during the thirty days previous to the request.

(14) "Individual reentry plan" means the plan to prepare an offender for release into the community. It should be developed collaboratively between the department and the offender and based on an assessment of the offender using a standardized and comprehensive tool to identify the offender's risks and needs. The individual reentry plan describes actions that should occur to prepare individual offenders for release from prison or jail, specifies the supervision and services they will experience in the community, and describes an offender's eventual discharge to aftercare upon successful completion of supervision. An individual reentry plan is updated throughout the period of an offender's incarceration and supervision to be relevant to the offender's current needs and risks.

(15) "Inmate" means a person committed to the custody of the department, including but not limited to persons residing in a correctional institution or facility and persons released from such facility on furlough, work release, or community custody, and persons received from another state, state agency, county, or federal jurisdiction.

(16) "Privilege" means any goods or services, education or work programs, or earned early release days, the receipt of which are directly linked to an inmate's (a) good conduct; and (b) good performance. Privileges do not include any goods or services the department is required to provide under the state or federal Constitution or under state or federal law.

(17) "Promising practice" means a practice that presents, based on preliminary information, potential for becoming a research-based or consensus-based practice.

(18) "Research-based" means a program or practice that has some research demonstrating effectiveness, but that does not yet meet the standard of evidence-based practices.

(19) "Secretary" means the secretary of corrections or his or her designee.

(20) "Significant expansion" includes any expansion into a new product line or service to the class I business that results from an increase in benefits provided by the department, including a decrease in labor costs, rent, or utility rates (for water, sewer, electricity, and disposal), an increase in work program space, tax advantages, or other overhead costs.

(21) "Superintendent" means the superintendent of a correctional facility under the jurisdiction of the Washington state department of corrections, or his or her designee.

(22) "Unfair competition" means any net competitive advantage that a business may acquire as a result of a correctional industries contract, including labor costs, rent, tax advantages, utility rates (water, sewer, electricity, and disposal), and other overhead costs. To determine net competitive advantage, the correctional industries board shall review and quantify any expenses unique to operating a for-profit business inside a prison.

(23) "Vocational training" or "vocational education" means "vocational education" as defined in RCW 72.62.020.

(24) "Washington business" means an in-state manufacturer or service provider subject to chapter 82.04 RCW existing on June 10, 2004.

(25) "Work programs" means all classes of correctional industries jobs authorized under RCW 72.09.100. [2009 c 521 § 165; 2008 c 231 § 47; 2007 c 483 § 202; 2004 c 167 § 6; 1995 1st sp.s. c 19 § 3; 1987 c 312 § 2.]

***Reviser's note:** RCW 9.94A.728 was amended by 2009 c 399 § 1, 2009 c 441 § 1, and 2009 c 455 §§ 1 and 2 without reference to each other. 2009 c 455 §§ 1 and 2 delete language concerning "earned early release" and refer to § 3 (RCW 9.94A.729) as authorizing earned early release time.

Effective dates—2009 c 521 §§ 5-8, 79, 87-103, 107, 151, 165, 166, 173-175, and 190-192: See note following RCW 2.10.900.

Intent—Application—Application of repealers—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Severability—2008 c 231: See note following RCW 9.94A.500.

Intent—2007 c 483: See note following RCW 72.09.270.

Findings—Part headings not law—Severability—2007 c 483: See RCW 72.78.005, 72.78.900, and 72.78.901.

Findings—Purpose—Short title—Severability—Effective date—1995 1st sp.s. c 19: See notes following RCW 72.09.450.

72.09.111 Inmate wages—Deductions—Availability of savings—Employment goals—Recovery of cost of incarceration. (1) The secretary shall deduct taxes and legal financial obligations from the gross wages, gratuities, or workers' compensation benefits payable directly to the inmate under chapter 51.32 RCW, of each inmate working in correctional industries work programs, or otherwise receiving such wages, gratuities, or benefits. The secretary shall also deduct child support payments from the gratuities of each inmate working in class II through class IV correctional industries work programs. The secretary shall develop a formula for the distribution of offender wages, gratuities, and benefits. The formula shall not reduce the inmate account below the indigency level, as defined in RCW 72.09.015.

(a) The formula shall include the following minimum deductions from class I gross wages and from all others earning at least minimum wage:

(i) Five percent to the state general fund;

(ii) Ten percent to a department personal inmate savings account;

(iii) Twenty percent to the department to contribute to the cost of incarceration; and

(iv) Twenty percent for payment of legal financial obligations for all inmates who have legal financial obligations owing in any Washington state superior court.

(b) The formula shall include the following minimum deductions from class II gross gratuities:

(i) Five percent to the state general fund;

(ii) Ten percent to a department personal inmate savings account;

(iii) Fifteen percent to the department to contribute to the cost of incarceration;

(iv) Twenty percent for payment of legal financial obligations for all inmates who have legal financial obligations owing in any Washington state superior court; and

(v) Fifteen percent for any child support owed under a support order.

(c) The formula shall include the following minimum deductions from any workers' compensation benefits paid pursuant to RCW 51.32.080:

(i) Five percent to the state general fund;

(ii) Ten percent to a department personal inmate savings account;

(iii) Twenty percent to the department to contribute to the cost of incarceration; and

(iv) An amount equal to any legal financial obligations owed by the inmate established by an order of any Washington state superior court up to the total amount of the award.

(d) The formula shall include the following minimum deductions from class III gratuities:

(i) Five percent for the state general fund; and

(ii) Fifteen percent for any child support owed under a support order.

(e) The formula shall include the following minimum deduction from class IV gross gratuities:

(i) Five percent to the department to contribute to the cost of incarceration; and

(ii) Fifteen percent for any child support owed under a support order.

(2) Any person sentenced to life imprisonment without possibility of release or parole under chapter 10.95 RCW or sentenced to death shall be exempt from the requirement under subsection (1)(a)(ii), (b)(ii), or (c)(ii).

(3)(a) The department personal inmate savings account, together with any accrued interest, shall only be available to an inmate at the following times:

(i) The time of his or her release from confinement;

(ii) Prior to his or her release from confinement in order to secure approved housing; or

(iii) When the secretary determines that an emergency exists for the inmate.

(b) If funds are made available pursuant to (a)(ii) or (iii) of this subsection, the funds shall be made available to the inmate in an amount determined by the secretary.

(c) The management of classes I, II, and IV correctional industries may establish an incentive payment for offender workers based on productivity criteria. This incentive shall be paid separately from the hourly wage/gratuity rate and shall not be subject to the specified deduction for cost of incarceration.

(4)(a) Subject to availability of funds for the correctional industries program, the expansion of inmate employment in class I and class II correctional industries shall be implemented according to the following schedule:

(i) Not later than June 30, 2005, the secretary shall achieve a net increase of at least two hundred in the number of inmates employed in class I or class II correctional industries work programs above the number so employed on June 30, 2003;

(ii) Not later than June 30, 2006, the secretary shall achieve a net increase of at least four hundred in the number of inmates employed in class I or class II correctional industries work programs above the number so employed on June 30, 2003;

(iii) Not later than June 30, 2007, the secretary shall achieve a net increase of at least six hundred in the number of inmates employed in class I or class II correctional industries work programs above the number so employed on June 30, 2003;

(iv) Not later than June 30, 2008, the secretary shall achieve a net increase of at least nine hundred in the number of inmates employed in class I or class II correctional industries work programs above the number so employed on June 30, 2003;

(v) Not later than June 30, 2009, the secretary shall achieve a net increase of at least one thousand two hundred in the number of inmates employed in class I or class II correctional industries work programs above the number so employed on June 30, 2003;

(vi) Not later than June 30, 2010, the secretary shall achieve a net increase of at least one thousand five hundred in the number of inmates employed in class I or class II correctional industries work programs above the number so employed on June 30, 2003.

(b) Failure to comply with the schedule in this subsection does not create a private right of action.

(5) In the event that the offender worker's wages, gratuity, or workers' compensation benefit is subject to garnishment for support enforcement, the state general fund, savings, and cost of incarceration deductions shall be calculated on the net wages after taxes, legal financial obligations, and garnishment.

(6) The department shall explore other methods of recovering a portion of the cost of the inmate's incarceration and for encouraging participation in work programs, including development of incentive programs that offer inmates benefits and amenities paid for only from wages earned while working in a correctional industries work program.

(7) The department shall develop the necessary administrative structure to recover inmates' wages and keep records of the amount inmates pay for the costs of incarceration and amenities. All funds deducted from inmate wages under subsection (1) of this section for the purpose of contributions to the cost of incarceration shall be deposited in a dedicated fund with the department and shall be used only for the purpose of enhancing and maintaining correctional industries work programs.

(8) It shall be in the discretion of the secretary to apportion the inmates between class I and class II depending on available contracts and resources.

(9) Nothing in this section shall limit the authority of the department of social and health services division of child support from taking collection action against an inmate's moneys, assets, or property pursuant to chapter 26.23, 74.20, or 74.20A RCW. [2009 c 479 § 60; 2007 c 483 § 605; 2004 c 167 § 7. Prior: 2003 c 379 § 25; 2003 c 271 § 2; 2002 c 126 § 2; 1999 c 325 § 2; 1994 sp.s. c 7 § 534; 1993 sp.s. c 20 § 2.]

Effective date—2009 c 479: See note following RCW 2.56.030.

Finding—Intent—2007 c 483: See note following RCW 35.82.340.

Findings—Part headings not law—Severability—2007 c 483: See RCW 72.78.005, 72.78.900, and 72.78.901.

Severability—Effective dates—2003 c 379: See notes following RCW 9.94A.728.

Intent—Purpose—2003 c 379 §§ 13-27: See note following RCW 9.94A.760.

Effective date—1994 sp.s. c 7 § 534: "Section 534 of this act shall take effect June 30, 1994." [1994 sp.s. c 7 § 536.]

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Effective date—1993 sp.s. c 20 § 2: "Section 2 of this act shall take effect June 30, 1994." [1993 sp.s. c 20 § 10.]

Severability—1993 sp.s. c 20: See note following RCW 43.19.534.

72.09.335 Sex offenders—Treatment opportunity. The department shall provide offenders sentenced under RCW 9.94A.507 with the opportunity for sex offender treatment during incarceration. [2009 c 28 § 34; 2001 2nd sp.s. c 12 § 305.]

Effective date—2009 c 28: See note following RCW 2.24.040.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Application—2001 2nd sp.s. c 12 §§ 301-363: See note following RCW 9.94A.030.

72.09.340 Supervision of sex offenders—Public safety—Policy for release plan evaluation and approval—Implementation, publicizing, notice—Rejection of residence locations of felony sex offenders of minor victims—Supervised visitation considerations. (1) In making all discretionary decisions regarding release plans for and supervision of sex offenders, the department shall set priorities and make decisions based on an assessment of public safety risks.

(2) The department shall, no later than September 1, 1996, implement a policy governing the department's evaluation and approval of release plans for sex offenders. The policy shall include, at a minimum, a formal process by which victims, witnesses, and other interested people may provide information and comments to the department on potential safety risks to specific individuals or classes of individuals posed by a specific sex offender. The department shall make all reasonable efforts to publicize the availability of this process through currently existing mechanisms and shall seek the assistance of courts, prosecutors, law enforcement, and victims' advocacy groups in doing so. Notice of an offender's proposed residence shall be provided to all people registered to receive notice of an offender's release under RCW 72.09.712(2), except that in no case may this notification requirement be construed to require an extension of an offender's release date.

(3)(a) For any offender convicted of a felony sex offense against a minor victim after June 6, 1996, the department shall not approve a residence location if the proposed residence: (i) Includes a minor victim or child of similar age or circumstance as a previous victim who the department determines may be put at substantial risk of harm by the offender's residence in the household; or (ii) is within close proximity of the current residence of a minor victim, unless the whereabouts of the minor victim cannot be determined or unless such a restriction would impede family reunification efforts ordered by the court or directed by the department of social and health services. The department is further authorized to reject a residence location if the proposed residence is within close proximity to schools, child care centers, playgrounds, or other grounds or facilities where children of similar age or circumstance as a previous victim are present who the department determines may be put at substantial risk of harm by the sex offender's residence at that location.

(b) In addition, for any offender prohibited from living in a community protection zone under RCW 9.94A.703(1)(c), the department may not approve a residence location if the proposed residence is in a community protection zone.

(4) When the department requires supervised visitation as a term or condition of a sex offender's community placement under RCW 9.94B.050(6), the department shall, prior to approving a supervisor, consider the following:

(a) The relationships between the proposed supervisor, the offender, and the minor; (b) the proposed supervisor's acknowledgment and understanding of the offender's prior criminal conduct, general knowledge of the dynamics of child sexual abuse, and willingness and ability to protect the minor from the potential risks posed by contact with the offender; and (c) recommendations made by the department of social and health services about the best interests of the child. [2009 c 28 § 35; 2005 c 436 § 3; 1996 c 215 § 3; 1990 c 3 § 708.]

Reviser's note: 2005 c 436 § 6 (an expiration date section) was repealed by 2006 c 131 § 2.

Effective date—2009 c 28: See note following RCW 2.24.040.

Index, part headings not law—Severability—Effective dates—Application—1990 c 3: See RCW 18.155.900 through 18.155.902.

72.09.370 Offenders with mental illness who are believed to be dangerous—Plan for postrelease treatment and support services—Rules. (1) The offender reentry community safety program is established to provide intensive services to offenders identified under this subsection and to thereby promote public safety. The secretary shall identify offenders in confinement or partial confinement who: (a) Are reasonably believed to be dangerous to themselves or others; and (b) have a mental disorder. In determining an offender's dangerousness, the secretary shall consider behavior known to the department and factors, based on research, that are linked to an increased risk for dangerousness of offenders with mental illnesses and shall include consideration of an offender's chemical dependency or abuse.

(2) Prior to release of an offender identified under this section, a team consisting of representatives of the department of corrections, the division of mental health, and, as

necessary, the indeterminate sentence review board, other divisions or administrations within the department of social and health services, specifically including the division of alcohol and substance abuse and the division of developmental disabilities, the appropriate regional support network, and the providers, as appropriate, shall develop a plan, as determined necessary by the team, for delivery of treatment and support services to the offender upon release. In developing the plan, the offender shall be offered assistance in executing a mental health directive under chapter 71.32 RCW, after being fully informed of the benefits, scope, and purposes of such directive. The team may include a school district representative for offenders under the age of twenty-one. The team shall consult with the offender's counsel, if any, and, as appropriate, the offender's family and community. The team shall notify the crime victim/witness program, which shall provide notice to all people registered to receive notice under RCW 72.09.712 of the proposed release plan developed by the team. Victims, witnesses, and other interested people notified by the department may provide information and comments to the department on potential safety risk to specific individuals or classes of individuals posed by the specific offender. The team may recommend: (a) That the offender be evaluated by the designated mental health professional, as defined in chapter 71.05 RCW; (b) department-supervised community treatment; or (c) voluntary community mental health or chemical dependency or abuse treatment.

(3) Prior to release of an offender identified under this section, the team shall determine whether or not an evaluation by a designated mental health professional is needed. If an evaluation is recommended, the supporting documentation shall be immediately forwarded to the appropriate designated mental health professional. The supporting documentation shall include the offender's criminal history, history of judicially required or administratively ordered involuntary antipsychotic medication while in confinement, and any known history of involuntary civil commitment.

(4) If an evaluation by a designated mental health professional is recommended by the team, such evaluation shall occur not more than ten days, nor less than five days, prior to release.

(5) A second evaluation by a designated mental health professional shall occur on the day of release if requested by the team, based upon new information or a change in the offender's mental condition, and the initial evaluation did not result in an emergency detention or a summons under chapter 71.05 RCW.

(6) If the designated mental health professional determines an emergency detention under chapter 71.05 RCW is necessary, the department shall release the offender only to a state hospital or to a consenting evaluation and treatment facility. The department shall arrange transportation of the offender to the hospital or facility.

(7) If the designated mental health professional believes that a less restrictive alternative treatment is appropriate, he or she shall seek a summons, pursuant to the provisions of chapter 71.05 RCW, to require the offender to appear at an evaluation and treatment facility. If a summons is issued, the offender shall remain within the corrections facility until completion of his or her term of confinement and be transported, by corrections personnel on the day of completion, directly to the identified evaluation and treatment facility.

(8) The secretary shall adopt rules to implement this section. [2009 c 319 § 3; 2009 c 28 § 36; 2001 2nd sp.s. c 12 § 362; 1999 c 214 § 2.]

Reviser's note: This section was amended by 2009 c 28 § 36 and by 2009 c 319 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2009 c 28: See note following RCW 2.24.040.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Application—2001 2nd sp.s. c 12 §§ 301-363: See note following RCW 9.94A.030.

Intent—1999 c 214: "The legislature intends to improve the process of identifying, and providing additional mental health treatment for, persons: (1) Determined to be dangerous to themselves or others as a result of a mental disorder or a combination of a mental disorder and chemical dependency or abuse; and (2) under, or being released from, confinement or partial confinement of the department of corrections.

The legislature does not create a presumption that any person subject to the provisions of this act is dangerous as a result of a mental disorder or chemical dependency or abuse. The legislature intends that every person subject to the provisions of this act retain the amount of liberty consistent with his or her condition, behavior, and legal status and that any restraint of liberty be done solely on the basis of forensic and clinical practices and standards." [1999 c 214 § 1.]

Effective date—1999 c 214: "Sections 1, 2, and 4 through 9 of this act take effect March 15, 2000." [1999 c 214 § 12.]

72.09.480 Inmate funds subject to deductions—Definitions—Exceptions—Child support collection actions. (1) Unless the context clearly requires otherwise, the definitions in this section apply to this section.

(a) "Cost of incarceration" means the cost of providing an inmate with shelter, food, clothing, transportation, supervision, and other services and supplies as may be necessary for the maintenance and support of the inmate while in the custody of the department, based on the average per inmate costs established by the department and the office of financial management.

(b) "Minimum term of confinement" means the minimum amount of time an inmate will be confined in the custody of the department, considering the sentence imposed and adjusted for the total potential earned early release time available to the inmate.

(c) "Program" means any series of courses or classes necessary to achieve a proficiency standard, certificate, or postsecondary degree.

(2) When an inmate, except as provided in subsections (4) and (8) of this section, receives any funds in addition to his or her wages or gratuities, except settlements or awards resulting from legal action, the additional funds shall be subject to the following deductions and the priorities established in chapter 72.11 RCW:

(a) Five percent to the state general fund;

(b) Ten percent to a department personal inmate savings account;

(c) Twenty percent for payment of legal financial obligations for all inmates who have legal financial obligations owing in any Washington state superior court;

(d) Twenty percent for any child support owed under a support order; and

(e) Twenty percent to the department to contribute to the cost of incarceration.

(3) When an inmate, except as provided in subsection (8) of this section, receives any funds from a settlement or award resulting from a legal action, the additional funds shall be subject to the deductions in RCW 72.09.111(1)(a) and the priorities established in chapter 72.11 RCW.

(4) When an inmate who is subject to a child support order receives funds from an inheritance, the deduction required under subsection (2)(e) of this section shall only apply after the child support obligation has been paid in full.

(5) The amount deducted from an inmate's funds under subsection (2) of this section shall not exceed the department's total cost of incarceration for the inmate incurred during the inmate's minimum or actual term of confinement, whichever is longer.

(6)(a) The deductions required under subsection (2) of this section shall not apply to funds received by the department from an offender or from a third party on behalf of an offender for payment of education or vocational programs or postsecondary education degree programs as provided in RCW 72.09.460 and 72.09.465.

(b) The deductions required under subsection (2) of this section shall not apply to funds received by the department from a third party, including but not limited to a nonprofit entity on behalf of the department's education, vocation, or postsecondary education degree programs.

(7) The deductions required under subsection (2) of this section shall not apply to any money received by the department, on behalf of an inmate, from family or other outside sources for the payment of postage expenses. Money received under this subsection may only be used for the payment of postage expenses and may not be transferred to any other account or purpose. Money that remains unused in the inmate's postage fund at the time of release shall be subject to the deductions outlined in subsection (2) of this section.

(8) When an inmate sentenced to life imprisonment without possibility of release or sentenced to death under chapter 10.95 RCW receives funds, deductions are required under subsection (2) of this section, with the exception of a personal inmate savings account under subsection (2)(b) of this section.

(9) The secretary of the department of corrections, or his or her designee, may exempt an inmate from a personal inmate savings account under subsection (2)(b) of this section if the inmate's earliest release date is beyond the inmate's life expectancy.

(10) The interest earned on an inmate savings account created as a result of the *plan in section 4, chapter 325, Laws of 1999 shall be exempt from the mandatory deductions under this section and RCW 72.09.111.

(11) Nothing in this section shall limit the authority of the department of social and health services division of child support, the county clerk, or a restitution recipient from taking collection action against an inmate's moneys, assets, or property pursuant to chapter 9.94A, 26.23, 74.20, or 74.20A RCW including, but not limited to, the collection of moneys received by the inmate from settlements or awards resulting from legal action. [2009 c 479 § 61. Prior: 2007 c 483 § 404; 2007 c 365 § 1; 2007 c 91 § 1; 2003 c 271 § 3; 1999 c 325 § 1; 1998 c 261 § 2; 1997 c 165 § 1; 1995 1st sp.s. c 19 § 8.]

***Reviser's note:** 1999 c 325 § 4 requires the secretary of corrections to prepare and submit a plan to the governor and legislature by December 1, 1999.

Effective date—2009 c 479: See note following RCW 2.56.030.

Findings—Intent—2007 c 483: See note following RCW 72.09.460.

Findings—Part headings not law—Severability—2007 c 483: See RCW 72.78.005, 72.78.900, and 72.78.901.

Findings—Purpose—Short title—Severability—Effective date—1995 1st sp.s. c 19: See notes following RCW 72.09.450.

72.09.712 Prisoner escape, parole, release, community custody or work release placement, or furlough—Notification procedures. ***(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*** (1) At the earliest possible date, and in no event later than thirty days before release except in the event of escape or emergency furloughs as defined in RCW 72.66.010, the department of corrections shall send written notice of parole, release, community custody, work release placement, furlough, or escape about a specific inmate convicted of a violent offense, a sex offense as defined by RCW 9.94A.030, a domestic violence court order violation pursuant to RCW 10.99.040, 10.99.050, 26.09.300, 26.10.220, 26.26.138, 26.50.110, 26.52.070, or 74.34.145, or a felony harassment offense as defined by RCW 9A.46.060 or 9A.46.110, to the following:

(a) The chief of police of the city, if any, in which the inmate will reside or in which placement will be made in a work release program; and

(b) The sheriff of the county in which the inmate will reside or in which placement will be made in a work release program.

The sheriff of the county where the offender was convicted shall be notified if the department does not know where the offender will reside. The department shall notify the state patrol of the release of all sex offenders, and that information shall be placed in the Washington crime information center for dissemination to all law enforcement.

(2) The same notice as required by subsection (1) of this section shall be sent to the following if such notice has been requested in writing about a specific inmate convicted of a violent offense, a sex offense as defined by RCW 9.94A.030, a domestic violence court order violation pursuant to RCW 10.99.040, 10.99.050, 26.09.300, 26.10.220, 26.26.138, 26.50.110, 26.52.070, or 74.34.145, or a felony harassment offense as defined by RCW 9A.46.060 or 9A.46.110:

(a) The victim of the crime for which the inmate was convicted or the victim's next of kin if the crime was a homicide;

(b) Any witnesses who testified against the inmate in any court proceedings involving the violent offense;

(c) Any person specified in writing by the prosecuting attorney; and

(d) Any person who requests such notice about a specific inmate convicted of a sex offense as defined by RCW 9.94A.030 from the department of corrections at least sixty days prior to the expected release date of the offender.

Information regarding victims, next of kin, or witnesses requesting the notice, information regarding any other person specified in writing by the prosecuting attorney to receive the notice, and the notice are confidential and shall not be avail-

able to the inmate. Whenever the department of corrections mails notice pursuant to this subsection and the notice is returned as undeliverable, the department shall attempt alternative methods of notification, including a telephone call to the person's last known telephone number.

(3) The existence of the notice requirements contained in subsections (1) and (2) of this section shall not require an extension of the release date in the event that the release plan changes after notification.

(4) If an inmate convicted of a violent offense, a sex offense as defined by RCW 9.94A.030, a domestic violence court order violation pursuant to RCW 10.99.040, 10.99.050, 26.09.300, 26.10.220, 26.26.138, 26.50.110, 26.52.070, or 74.34.145, or a felony harassment offense as defined by RCW 9A.46.060 or 9A.46.110, escapes from a correctional facility, the department of corrections shall immediately notify, by the most reasonable and expedient means available, the chief of police of the city and the sheriff of the county in which the inmate resided immediately before the inmate's arrest and conviction. If previously requested, the department shall also notify the witnesses and the victim of the crime for which the inmate was convicted or the victim's next of kin if the crime was a homicide. If the inmate is recaptured, the department shall send notice to the persons designated in this subsection as soon as possible but in no event later than two working days after the department learns of such recapture.

(5) If the victim, the victim's next of kin, or any witness is under the age of sixteen, the notice required by this section shall be sent to the parents or legal guardian of the child.

(6) The department of corrections shall send the notices required by this chapter to the last address provided to the department by the requesting party. The requesting party shall furnish the department with a current address.

(7) The department of corrections shall keep, for a minimum of two years following the release of an inmate, the following:

(a) A document signed by an individual as proof that that person is registered in the victim or witness notification program; and

(b) A receipt showing that an individual registered in the victim or witness notification program was mailed a notice, at the individual's last known address, upon the release or movement of an inmate.

(8) For purposes of this section the following terms have the following meanings:

(a) "Violent offense" means a violent offense under RCW 9.94A.030;

(b) "Next of kin" means a person's spouse, state registered domestic partner, parents, siblings and children.

(9) Nothing in this section shall impose any liability upon a chief of police of a city or sheriff of a county for failing to request in writing a notice as provided in subsection (1) of this section. [2009 c 521 § 166; 2009 c 400 § 1; 2008 c 231 § 27; 1996 c 215 § 4. Prior: 1994 c 129 § 3; 1994 c 77 § 1; prior: 1992 c 186 § 7; 1992 c 45 § 2; 1990 c 3 § 121; 1989 c 30 § 1; 1985 c 346 § 1. Formerly RCW 9.94A.612, 9.94A.155.]

Reviser's note: This section was amended by 2009 c 400 § 1 and by 2009 c 521 § 166, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2009 c 521 §§ 5-8, 79, 87-103, 107, 151, 165, 166, 173-175, and 190-192: See note following RCW 2.10.900.

Effective date—2009 c 400: "This act takes effect August 1, 2009." [2009 c 400 § 3.]

Intent—Application—Application of repealers—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Severability—2008 c 231: See note following RCW 9.94A.500.

Findings—Intent—1994 c 129: See note following RCW 4.24.550.

Severability—1992 c 186: See note following RCW 9A.46.110.

Severability—Application—1992 c 45: See notes following RCW 9.94A.840.

Index, part headings not law—Severability—Effective dates—Application—1990 c 3: See RCW 18.155.900 through 18.155.902.

72.09.713 Prisoner escape, parole, release, community custody or work release placement, or furlough—Notice of work release placement. (1) When a victim of a crime or the victim's next of kin requests notice under RCW 72.09.712 regarding a specific inmate, the department shall advise the requester in writing of the possibility that part of the sentence may be served by the inmate in a work release facility and instruct the requester on how to submit input to the department regarding the inmate's work release placement.

(2) When the department notifies a victim or the victim's next of kin under RCW 72.09.712 of an offender's placement in work release, the department shall also provide instruction on how to submit input regarding the offender's work release placement.

(3) The department shall consider any input received from a victim or the victim's next of kin under subsection (1) or (2) of this section if the input is received at least seven days prior to the offender's placement in work release. The department may consider any input from a victim or the victim's next of kin under subsection (1) or (2) of this section if the input is received less than seven days prior to the offender's placement in work release. The department may alter its placement decision based on any input considered under this subsection. [2009 c 69 § 1.]

Effective date—2009 c 69 § 1: "Section 1 of this act takes effect August 1, 2009." [2009 c 69 § 2.]

72.09.714 Prisoner escape, release, or furlough—Homicide, violent, and sex offenses—Rights of victims and witnesses. The department of corrections shall provide the victims, witnesses, and next of kin in the case of a homicide and victims and witnesses involved in violent offense cases, sex offenses as defined by RCW 9.94A.030, a domestic violence court order violation pursuant to RCW 10.99.040, 10.99.050, 26.09.300, 26.10.220, 26.26.138, 26.50.110, 26.52.070, or 74.34.145, or a felony harassment pursuant to RCW 9A.46.060 or 9A.46.110, a statement of the rights of victims and witnesses to request and receive notification under RCW 72.09.712 and 72.09.716. [2009 c 400 § 2; 2009 c 28 § 37; 1989 c 30 § 2; 1985 c 346 § 2. Formerly RCW 9.94A.614, 9.94A.156.]

Reviser's note: This section was amended by 2009 c 28 § 37 and by 2009 c 400 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2009 c 400: See note following RCW 72.09.712.

Effective date—2009 c 28: See note following RCW 2.24.040.

72.09.716 Prisoner escape, release, or furlough—Requests for notification. Requests for notification under RCW 72.09.712 shall be made by sending a written request by certified mail directly to the department of corrections and giving the defendant's name, the name of the county in which the trial took place, and the month of the trial. Notification information and necessary forms shall be available through the department of corrections, county prosecutors' offices, and other agencies as deemed appropriate by the department of corrections. [2009 c 28 § 38; 1985 c 346 § 3. Formerly RCW 9.94A.616, 9.94A.157.]

Effective date—2009 c 28: See note following RCW 2.24.040.

72.09.718 Prisoner escape, release, or furlough—Notification as additional requirement. The notification requirements of RCW 72.09.712 are in addition to any requirements in RCW 43.43.745 or other law. [2009 c 28 § 39; 1985 c 346 § 4. Formerly RCW 9.94A.618, 9.94A.158.]

Effective date—2009 c 28: See note following RCW 2.24.040.

72.09.720 Prisoner escape, release, or furlough—Consequences of failure to notify. Civil liability shall not result from failure to provide notice required under RCW 72.09.712 through 72.09.718, 9.94A.030, and 43.43.745 unless the failure is the result of gross negligence. [2009 c 28 § 40; 1985 c 346 § 7. Formerly RCW 9.94A.620, 9.94A.159.]

Effective date—2009 c 28: See note following RCW 2.24.040.

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

72.09.906 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. ***(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 164.]

Chapter 72.23 RCW

PUBLIC AND PRIVATE FACILITIES FOR MENTALLY ILL

Sections

72.23.920 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. *(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*

72.23.920 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. ***(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 167.]

Chapter 72.36 RCW

SOLDIERS' AND VETERANS' HOMES AND VETERANS' CEMETERY

Sections

72.36.115 Eastern Washington state veterans' cemetery. *(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*
72.36.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. *(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*

72.36.115 Eastern Washington state veterans' cemetery. ***(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*** (1) The department shall establish and maintain in this state an eastern Washington state veterans' cemetery.

(2) All honorably discharged veterans, as defined by RCW 41.04.007, and their spouses or state registered domestic partners are eligible for interment in the eastern Washington state veterans' cemetery.

(3) The department shall collect all federal veterans' burial benefits and other available state or county resources.

(4) The department shall adopt rules defining the services available, eligibility, fees, and the general operations associated with the eastern Washington state veterans' cemetery. [2009 c 521 § 169; 2007 c 43 § 2.]

Finding—2007 c 43: "The legislature recognizes the unique sacrifices made by veterans and their family members. The legislature recognizes further that while all veterans are entitled to interment at the Tahoma national cemetery, veterans and families living in eastern Washington desire a veterans' cemetery location closer to their homes. The legislature requested and received the department of veterans affairs feasibility study and business plan outlining the need and feasibility and now intends to establish a state

veterans' cemetery to honor veterans in their final resting place." [2007 c 43 § 1.]

72.36.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. ***(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 168.]

Chapter 72.40 RCW

STATE SCHOOLS FOR BLIND, DEAF, SENSORY HANDICAPPED

Sections

72.40.010 Schools established—Purpose—Direction.
72.40.015 Center for childhood deafness and hearing loss—Functions.
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72.40.0191 Center for childhood deafness and hearing loss—Director's powers and duties.
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72.40.028 Teachers' qualifications—Salaries—Provisional certification.
72.40.031 School year—School term—Legal holidays—Use of schools.
72.40.070 Duty of educational service districts.
72.40.120 Center for childhood deafness and hearing loss—School for the blind—Appropriations.
72.40.200 Safety of students and protection from child abuse and neglect.
72.40.210 Reports to parents—Requirement.
72.40.220 Behavior management policies, procedures, and techniques.
72.40.250 Protection from child abuse and neglect—Supervision of employees and volunteers—Procedures.
72.40.280 Monitoring of residential program by department of social and health services—Recommendations—Comprehensive child health and safety reviews—Access to records and documents—Safety standards.

72.40.010 Schools established—Purpose—Direction. There are established at Vancouver, Clark county, a school which shall be known as the state school for the blind, and a separate school which shall be known as the state school for the deaf. The primary purpose of the state school for the blind and the state school for the deaf is to educate and train hearing and visually impaired children.

The school for the blind shall be under the direction of the superintendent with the advice of the board of trustees. The school for the deaf shall be under the direction of the director of the center or the director's designee and the board of trustees. [2009 c 381 § 3; 2002 c 209 § 1; 1985 c 378 § 11; 1959 c 28 § 72.40.010. Prior: 1913 c 10 § 1; 1886 p 136 § 1; RRS § 4645.]

Findings—Intent—Transfer of powers, duties, and property—Construction of statutory references—2009 c 381: See notes following RCW 72.40.015.

Effective date—2002 c 209: See note following RCW 72.42.021.

Severability—Effective date—1985 c 378: See notes following RCW 72.01.050.

72.40.015 Center for childhood deafness and hearing loss—Functions. (1) The Washington state center for childhood deafness and hearing loss is established to provide statewide leadership for the coordination and delivery of educational services to children who are deaf or hard of hearing. The activities of the center shall be under the authority of the director and the board of trustees. The superintendent and board of trustees of the state school for the deaf as of July 26, 2009, shall be the director and board of trustees of the center.

(2) The center's primary functions are:

(a) Managing and directing the supervision of the state school for the deaf;

(b) Providing statewide leadership and support for the coordination of regionally delivered educational services in the full range of communication modalities, for children who are deaf or hard of hearing; and

(c) Collaborating with appropriate public and private partners for the training and professional development of educators serving children who are deaf or hard of hearing. [2009 c 381 § 2.]

Findings—Intent—2009 c 381: "The legislature finds that the education of children who are deaf presents unique challenges because deafness is a low-incidence disability significantly impacting the child's ability to access communication at home, at school, and in the community. The legislature further finds that over the past fifty years, there have been numerous advances in technology as well as a growing awareness about the importance of delivering services to children in a variety of communication modalities to support their early and continued access to communication. The legislature intends to enhance the coordination of regionally delivered educational services and supports for children who are deaf or hard of hearing and to promote the development of communication-rich learning environments for these children." [2009 c 381 § 1.]

Transfer of powers, duties, and property—Construction of statutory references—2009 c 381: "(1) The state school for the deaf is hereby abolished and its powers, duties, and functions are hereby transferred to the Washington state center for childhood deafness and hearing loss. All references to the superintendent or the state school for the deaf in the Revised Code of Washington shall be construed to mean the director or the Washington state center for childhood deafness and hearing loss.

(2)(a) All reports, documents, surveys, books, records, files, papers, or written material in the possession of the state school for the deaf shall be delivered to the custody of the Washington state center for childhood deafness and hearing loss. All cabinets, furniture, office equipment, motor vehicles, and other tangible property employed by the state school for the deaf shall be made available to the Washington state center for childhood deafness and hearing loss. All funds, credits, or other assets held by the state school for the deaf shall be assigned to the Washington state center for childhood deafness and hearing loss.

(b) Any appropriations made to the state school for the deaf shall, on July 26, 2009, be transferred and credited to the Washington state center for childhood deafness and hearing loss.

(c) If any question arises as to the transfer of any personnel, funds, books, documents, records, papers, files, equipment, or other tangible property used or held in the exercise of the powers and the performance of the duties and functions transferred, the director of financial management shall make a determination as to the proper allocation and certify the same to the state agencies concerned.

(3) All employees of the state school for the deaf are transferred to the jurisdiction of the Washington state center for childhood deafness and hearing loss. All employees classified under chapter 41.06 RCW, the state civil service law, are assigned to the Washington state center for childhood deafness and hearing loss to perform their usual duties upon the same terms as formerly, without any loss of rights, subject to any action that may be appropriate thereafter in accordance with the laws and rules governing state civil service.

(4) All rules and all pending business before the state school for the

deaf shall be continued and acted upon by the Washington state center for childhood deafness and hearing loss. All existing contracts and obligations shall remain in full force and shall be performed by the Washington state center for childhood deafness and hearing loss.

(5) The transfer of the powers, duties, functions, and personnel of the state school for the deaf shall not affect the validity of any act performed before July 26, 2009.

(6) If apportionments of budgeted funds are required because of the transfers directed by this section, the director of financial management shall certify the apportionments to the agencies affected, the state auditor, and the state treasurer. Each of these shall make the appropriate transfer and adjustments in funds and appropriation accounts and equipment records in accordance with the certification.

(7) The existing bargaining units shall be transferred in their entirety without the merging of other bargaining units or the inclusion of employees from other bargaining units. Nothing contained in this section may be construed to alter any of the existing collective bargaining units unless the bargaining unit has been modified by action of the public employment relations commission as provided by law. Therefore, the certification of the existing bargaining units shall remain. However, the commission may, upon request, amend the certification to reflect the name of the new agency. In addition, nothing in this section may be construed to alter the provisions of any existing collective bargaining agreement until the agreement has expired." [2009 c 381 § 11.]

72.40.019 Center for childhood deafness and hearing loss—Appointment of director—Qualifications. The governor shall appoint a director for the Washington state center for childhood deafness and hearing loss. The director shall have a masters or higher degree from an accredited college or university in school administration or deaf education, five or more years of experience teaching or providing habilitative services to deaf or hard of hearing students, and three or more years administrative or supervisory experience in programs for deaf or hard of hearing students. [2009 c 381 § 4; 1985 c 378 § 14.]

Findings—Intent—Transfer of powers, duties, and property—Construction of statutory references—2009 c 381: See notes following RCW 72.40.015.

Severability—Effective date—1985 c 378: See notes following RCW 72.01.050.

72.40.0191 Center for childhood deafness and hearing loss—Director's powers and duties. In addition to any other powers and duties prescribed by law, the director of the Washington state center for childhood deafness and hearing loss:

(1) Shall be responsible for the supervision and management of the center, including the state school for the deaf, and the property of various kinds. The director may designate an individual to oversee the day-to-day operation and supervision of students at the school;

(2) Shall employ members of the faculty, administrative officers, and other employees, who shall all be subject to chapter 41.06 RCW, the state civil service law, unless specifically exempted by other provisions of law;

(3) Shall provide technical assistance and support as appropriate to local and regional efforts to build critical mass and communication-rich networking opportunities for children who are deaf or hard of hearing and their families;

(4) Shall establish the course of study including vocational training, with the assistance of the faculty and the approval of the board of trustees;

(5) Shall, as approved by the board of trustees, control and authorize the use of the facilities for night school, summer school, public meetings, applied research and training for the instruction of students who are deaf or hard of hearing, outreach and support to families of children who are deaf or hard of hearing, or other purposes consistent with the purposes of the center;

(6) Shall purchase all supplies and lease or purchase equipment and other personal property needed for the operation or maintenance of the center;

(7) Shall prepare, submit to the board of trustees for approval, and administer the budget consistent with RCW 43.88.160 and the budget and accounting act, chapter 43.88 RCW generally, as applicable;

(8) Shall provide technical assistance and support to educational service districts for the regional delivery of a full range of educational services to students who are deaf or hard of hearing, including but not limited to services relying on American Sign Language, auditory oral education, total communication, and signed exact English;

(9) As requested by educational service districts, shall recruit, employ, and deploy itinerant teachers to provide in-district services to children who are deaf or hard of hearing;

(10) May establish criteria, in addition to state certification, for the teachers at the school and employees of the center;

(11) May establish, with the approval of the board of trustees, new facilities as needs demand;

(12) May adopt rules, under chapter 34.05 RCW, as approved by the board of trustees and as deemed necessary for the governance, management, and operation of the center;

(13) May adopt rules, as approved by the board of trustees, for pedestrian and vehicular traffic on property owned, operated, and maintained by the center;

(14) Except as otherwise provided by law, may enter into contracts as the director deems essential to the purpose of the center;

(15) May receive gifts, grants, conveyances, devises, and bequests of real or personal property from whatever source, as may be made from time to time, in trust or otherwise, whenever the terms and conditions will aid in carrying out the programs of the center; sell, lease, or exchange, invest, or expend the same or the proceeds, rents, profits, and income thereof except as limited by the terms and conditions thereof; and adopt rules to govern the receipt and expenditure of the proceeds, rents, profits, and income thereof;

(16) May adopt rules, as approved by the board of trustees, providing for the transferability of employees between the center and the school for the blind consistent with collective bargaining agreements in effect; and

(17) May adopt rules under chapter 34.05 RCW, as approved by the board of trustees, and perform all other acts not forbidden by law as the director deems necessary or appropriate to the administration of the center. [2009 c 381 § 5.]

Reviser's note: 2009 c 381 § 5 directed that this section be codified in chapter 72.42 RCW, but codification in chapter 72.40 RCW appears to be more appropriate.

Findings—Intent—Transfer of powers, duties, and property—Construction of statutory references—2009 c 381: See notes following RCW 72.40.015.

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

72.40.024 Superintendents and director—Additional powers and duties. In addition to the powers and duties under RCW 72.40.022 and 72.40.0191, the superintendent of the school for the blind and the director of the Washington state center for childhood deafness and hearing loss, or the director's designee, shall:

(1) Monitor the location and educational placement of each student reported to the superintendent and the director, or the director's designee, by the educational service district superintendents;

(2) Provide information about educational programs, instructional techniques, materials, equipment, and resources available to students with visual or auditory impairments to the parent or guardian, educational service district superintendent, and the superintendent of the school district where the student resides; and

(3) Serve as a consultant to the office of the superintendent of public instruction, provide instructional leadership, and assist school districts in improving their instructional programs for students with visual or hearing impairments. [2009 c 381 § 6; 2002 c 209 § 4; 1993 c 147 § 2; 1985 c 378 § 17.]

Findings—Intent—Transfer of powers, duties, and property—Construction of statutory references—2009 c 381: See notes following RCW 72.40.015.

Effective date—2002 c 209: See notes following RCW 72.42.021.

Severability—Effective date—1985 c 378: See notes following RCW 72.01.050.

72.40.028 Teachers' qualifications—Salaries—Provisional certification. All teachers employed by the Washington state center for childhood deafness and hearing loss and the state school for the blind shall meet all certification requirements and the programs shall meet all accreditation requirements and conform to the standards defined by law or by rule of the Washington professional educator standards board or the office of the state superintendent of public instruction. The superintendent and the director, by rule, may adopt additional educational standards for their respective facilities. Salaries of all certificated employees shall be set so as to conform to and be contemporary with salaries paid to other certificated employees of similar background and experience in the school district in which the program or facility is located. The superintendent and the director may provide for provisional certification for teachers in their respective facilities including certification for emergency, temporary, substitute, or provisional duty. [2009 c 381 § 7; 2006 c 263 § 829; 1985 c 378 § 18.]

Findings—Intent—Transfer of powers, duties, and property—Construction of statutory references—2009 c 381: See notes following RCW 72.40.015.

Findings—Purpose—Part headings not law—2006 c 263: See notes following RCW 28A.150.230.

Severability—Effective date—1985 c 378: See notes following RCW 72.01.050.

72.40.031 School year—School term—Legal holidays—Use of schools. The school year for the state school for the blind and the state school for the deaf shall commence on the first day of July of each year and shall terminate on the 30th day of June of the succeeding year. The regular school term shall be for a period of nine months and shall commence as near as reasonably practical at the time of the commencement of regular terms in other public schools, with the equivalent number of days as are now required by law, and the regulations of the superintendent of public instruction as now or hereafter amended, during the school year in other public schools. The school and the center shall observe all legal holidays, in the same manner as other agencies of state government, and will not be in session on such days and such other days as may be approved by the superintendent or the director. During the period when the schools are not in session during the regular school term, schools may be operated, subject to the approval of the superintendent or the director or the director's designee, for the instruction of students or for such other reasons which are in furtherance of the objects and purposes of the respective facilities. [2009 c 381 § 12; 1985 c 378 § 16; 1979 c 141 § 248; 1970 ex.s. c 50 § 6.]

Findings—Intent—2009 c 381: See note following RCW 72.40.015.

Severability—Effective date—1985 c 378: See notes following RCW 72.01.050.

72.40.070 Duty of educational service districts. It shall be the duty of each educational service district to make a full and specific report of visually impaired or deaf or hard of hearing youth to the superintendent of the school for the blind or the director of the Washington state center for childhood deafness and hearing loss, or the director's designee, as the case may be and the superintendent of public instruction, annually. The superintendent of public instruction shall report about the deaf or hard of hearing or visually impaired youth to the school for the blind and the Washington state center for childhood deafness and hearing loss, as the case may be, annually. [2009 c 381 § 18; 1985 c 378 § 22; 1979 c 141 § 250; 1975 1st ex.s. c 275 § 152; 1969 ex.s. c 176 § 98; 1959 c 28 § 72.40.070. Prior: 1909 c 97 p 259 § 7; 1897 c 118 § 253; 1890 p 497 § 2; RRS § 4651.]

Findings—Intent—2009 c 381: See note following RCW 72.40.015.

Severability—Effective date—1985 c 378: See notes following RCW 72.01.050.

Effective date—1969 ex.s. c 176: See note following RCW 72.40.060.

Rights preserved—Severability—1969 ex.s. c 176: See notes following RCW 28A.310.010.

Educational service districts—Superintendents—Boards: Chapter 28A.310 RCW.

72.40.120 Center for childhood deafness and hearing loss—School for the blind—Appropriations. Any appropriation for the Washington state center for childhood deafness and hearing loss or the school for the blind shall be made directly to the center or the school for the blind. [2009 c 381 § 8; 1991 c 65 § 1.]

Findings—Intent—Transfer of powers, duties, and property—Construction of statutory references—2009 c 381: See notes following RCW 72.40.015.

Effective date—1991 c 65: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1991." [1991 c 65 § 3.]

72.40.200 Safety of students and protection from child abuse and neglect. The Washington state center for childhood deafness and hearing loss and the state school for the blind shall promote the personal safety of students and

protect the children who attend from child abuse and neglect as defined in RCW 26.44.020. [2009 c 381 § 9; 2000 c 125 § 1.]

Findings—Intent—Transfer of powers, duties, and property—Construction of statutory references—2009 c 381: See notes following RCW 72.40.015.

Conflict with federal requirements—2000 c 125: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state." [2000 c 125 § 11.]

72.40.210 Reports to parents—Requirement. The director of the Washington state center for childhood deafness and hearing loss and the superintendent of the state school for the blind or their designees shall immediately report to the persons indicated the following events:

(1) To the child's parent, custodian, or guardian:

(a) The death of the child;

(b) Hospitalization of a child in attendance or residence at the facility;

(c) Allegations of child abuse or neglect in which the parent's child in attendance or residence at the facility is the alleged victim;

(d) Allegations of physical or sexual abuse in which the parent's child in attendance or residence at the facility is the alleged perpetrator;

(e) Life-threatening illness;

(f) The attendance at the facility of any child who is a registered sex offender under RCW 9A.44.130 as permitted by RCW 4.24.550.

(2) Notification to the parent shall be made by the means most likely to be received by the parent. If initial notification is made by telephone, such notification shall be followed by notification in writing within forty-eight hours after the initial verbal contact is made. [2009 c 381 § 10; 2000 c 125 § 2.]

Findings—Intent—Transfer of powers, duties, and property—Construction of statutory references—2009 c 381: See notes following RCW 72.40.015.

Conflict with federal requirements—2000 c 125: See note following RCW 72.40.200.

72.40.220 Behavior management policies, procedures, and techniques. (1) The director of the Washington state center for childhood deafness and hearing loss, or the director's designee, and the superintendent of the state school for the blind shall maintain in writing and implement behavior management policies and procedures that accomplish the following:

(a) Support the child's appropriate social behavior, self-control, and the rights of others;

(b) Foster dignity and self-respect for the child;

(c) Reflect the ages and developmental levels of children in care.

(2) The state school for the deaf and the state school for the blind shall use proactive, positive behavior support techniques to manage potential child behavior problems. These techniques shall include but not be limited to:

(a) Organization of the physical environment and staffing patterns to reduce factors leading to behavior incidents;

(b) Intervention before behavior becomes disruptive, in the least invasive and least restrictive manner available;

(c) Emphasis on verbal deescalation to calm the upset child;

(d) Redirection strategies to present the child with alternative resolution choices. [2009 c 381 § 19; 2000 c 125 § 3.]

Findings—Intent—2009 c 381: See note following RCW 72.40.015.

Conflict with federal requirements—2000 c 125: See note following RCW 72.40.200.

72.40.250 Protection from child abuse and neglect—Supervision of employees and volunteers—Procedures. In addition to the powers and duties under RCW 72.40.022 and 72.40.024, the director of the Washington state center for childhood deafness and hearing loss, or the director's designee, and the superintendent of the state school for the blind shall:

(1) Develop written procedures for the supervision of employees and volunteers who have the potential for contact with students. Such procedures shall be designed to prevent child abuse and neglect by providing for adequate supervision of such employees and volunteers, taking into consideration such factors as the student population served, architectural factors, and the size of the facility. Such procedures shall include, but need not be limited to, the following:

(a) Staffing patterns and the rationale for such;

(b) Responsibilities of supervisors;

(c) The method by which staff and volunteers are made aware of the identity of all supervisors, including designated on-site supervisors;

(d) Provision of written supervisory guidelines to employees and volunteers;

(e) Periodic supervisory conferences for employees and volunteers; and

(f) Written performance evaluations of staff to be conducted by supervisors in a manner consistent with applicable provisions of the civil service law.

(2) Develop written procedures for the protection of students when there is reason to believe an incident has occurred which would render a minor student an abused or neglected child within the meaning of RCW 26.44.020. Such procedures shall include, but need not be limited to, the following:

(a) Investigation. Immediately upon notification that a report of child abuse or neglect has been made to the department of social and health services or a law enforcement agency, the superintendent or the director, or the director's designee, shall:

(i) Preserve any potential evidence through such actions as securing the area where suspected abuse or neglect occurred;

(ii) Obtain proper and prompt medical evaluation and treatment, as needed, with documentation of any evidence of abuse or neglect; and

(iii) Provide necessary assistance to the department of social and health services and local law enforcement in their investigations;

(b) Safety. Upon notification that a report of suspected child abuse or neglect has been made to the department of social and health services or a law enforcement agency, the

superintendent or the director or his or her designee, with consideration for causing as little disruption as possible to the daily routines of the students, shall evaluate the situation and immediately take appropriate action to assure the health and safety of the students involved in the report and of any other students similarly situated, and take such additional action as is necessary to prevent future acts of abuse or neglect. Such action may include:

(i) Consistent with federal and state law:

(A) Removing the alleged perpetrator from the school;

(B) Increasing the degree of supervision of the alleged perpetrator; and

(C) Initiating appropriate disciplinary action against the alleged perpetrator;

(ii) Provision of increased training and increased supervision to volunteers and staff pertinent to the prevention and remediation of abuse and neglect;

(iii) Temporary removal of the students from a program and reassignment of the students within the school, as an emergency measure, if it is determined that there is a risk to the health or safety of such students in remaining in that program. Whenever a student is removed, pursuant to this subsection (2)(b)(iii), from a special education program or service specified in his or her individualized education program, the action shall be reviewed in an individualized education program meeting; and

(iv) Provision of counseling to the students involved in the report or any other students, as appropriate;

(c) Corrective action plans. Upon receipt of the results of an investigation by the department of social and health services pursuant to a report of suspected child abuse or neglect, the superintendent or the director, or the director's designee, after consideration of any recommendations by the department of social and health services for preventive and remedial action, shall implement a written plan of action designed to assure the continued health and safety of students and to provide for the prevention of future acts of abuse or neglect. [2009 c 381 § 20; 2000 c 125 § 6.]

Findings—Intent—2009 c 381: See note following RCW 72.40.015.

Conflict with federal requirements—2000 c 125: See note following RCW 72.40.200.

72.40.280 Monitoring of residential program by department of social and health services—Recommendations—Comprehensive child health and safety reviews—Access to records and documents—Safety standards. (1) The department of social and health services must periodically monitor the residential program at the state school for the deaf, including but not limited to examining the residential-related policies and procedures as well as the residential facilities. The department of social and health services must make recommendations to the director and the board of trustees of the center or its successor board on health and safety improvements related to child safety and well-being. The department of social and health services must conduct the monitoring reviews at least annually. The director or the director's designee may from time to time request technical assistance from the department of social and health services.

(2) The department of social and health services must conduct a comprehensive child health and safety review, as defined in rule, of the residential program at the state school for the deaf every three years.

(3) The state school for the deaf must provide the department of social and health services' staff with full and complete access to all records and documents that the department staff may request to carry out the requirements of this section. The department of social and health services must have full and complete access to all students and staff of the state school for the deaf to conduct interviews to carry out the requirements of this section.

(4) For the purposes of this section, the department of social and health services must use the safety standards established in this chapter when conducting the reviews. [2009 c 381 § 21; 2002 c 208 § 2.]

Findings—Intent—2009 c 381: See note following RCW 72.40.015.

Chapter 72.42 RCW

BOARD OF TRUSTEES—CENTER FOR CHILDHOOD DEAFNESS AND HEARING LOSS

(Formerly: Board of trustees—School for the deaf)

Sections

72.42.010 Intention—Purpose.
72.42.015 "Director" defined.
72.42.016 Additional definitions.
72.42.021 Board of trustees—Membership—Terms—Effect of new or revised boundaries for congressional districts—Vacancies.
72.42.041 Powers and duties.
72.42.060 Travel expenses.

72.42.010 Intention—Purpose. It is the intention of the legislature, in creating a board of trustees for the Washington state center for childhood deafness and hearing loss to perform the duties set forth in this chapter, that the board of trustees perform needed oversight services to the governor and the legislature of the center in the development of programs for the hard of hearing, and in the operation of the center, including the school for the deaf. [2009 c 381 § 13; 2002 c 209 § 5; 1985 c 378 § 31; 1972 ex.s. c 96 § 1.]

Findings—Intent—2009 c 381: See note following RCW 72.40.015.

Effective date—2002 c 209: See note following RCW 72.42.021.

Severability—Effective date—1985 c 378: See notes following RCW 72.01.050.

72.42.015 "Director" defined. Unless the context clearly requires otherwise as used in this chapter "director" means the director of the Washington state center for childhood deafness and hearing loss. [2009 c 381 § 14; 1985 c 378 § 32.]

Findings—Intent—2009 c 381: See note following RCW 72.40.015.

Severability—Effective date—1985 c 378: See notes following RCW 72.01.050.

72.42.016 Additional definitions. Unless the context clearly requires otherwise, as used in this chapter:

(1) "Center" means the Washington state center for childhood deafness and hearing loss serving local school districts across the state; and

(2) "School" means the Washington state residential school for the deaf located in Vancouver, Washington. [2009 c 381 § 15; 2002 c 209 § 6.]

Findings—Intent—2009 c 381: See note following RCW 72.40.015.

Effective date—2002 c 209: See note following RCW 72.42.021.

72.42.021 Board of trustees—Membership—Terms—Effect of new or revised boundaries for congressional districts—Vacancies. (1) The governance of the center and the school shall be vested in a board of trustees. The board shall consist of nine members appointed by the governor, with the consent of the senate. The board shall be composed of a resident from each of the state's congressional districts and may include:

(a) One member who is deaf or hard of hearing;

(b) Two members who are experienced educational professionals;

(c) One member who is experienced in providing residential services to youth; and

(d) One member who is the parent of a child who is deaf or hard of hearing and who is receiving or has received educational services related to deafness or hearing impairment from a public educational institution.

(2) No voting trustee may be an employee of the school or the center, a member of the board of directors of any school district, a member of the governing board of any public or private educational institution or an elected officer or member of the legislative authority of any municipal corporation. No more than two voting trustees may be school district or educational service district administrators appointed after July 1, 1986.

(3) Trustees shall be appointed by the governor to serve a term of five years, except that any person appointed to fill a vacancy occurring prior to the expiration of a term shall be appointed within sixty days of the vacancy and appointed only for the remainder of the term. Of the initial members, three must be appointed for two-year terms, three must be appointed for three-year terms, and the remainder must be appointed for five-year terms.

(4) The board shall not be deemed unlawfully constituted and a trustee shall not be deemed ineligible to serve the remainder of the trustee's unexpired term on the board solely by reason of the establishment of new or revised boundaries for congressional districts. In such an event, each trustee may continue to serve in office for the balance of the term for which he or she was appointed so long as the trustee continues to reside within the boundaries of the congressional district as they existed at the time of his or her appointment. Vacancies which occur in a trustee position during the balance of any term shall be filled pursuant to subsection (3) of this section by a successor who resides within the boundaries of the congressional district from which the member whose office was vacated was appointed as they existed at the time of his or her appointment. At the completion of such term, and thereafter, a successor shall be appointed from the congressional district which corresponds in number with the congressional district from which the incumbent was appointed. [2009 c 381 § 16; 2002 c 209 § 7.]

Findings—Intent—2009 c 381: See note following RCW 72.40.015.

Effective date—2002 c 209: "This act takes effect July 1, 2002, except that the governor may appoint the members of the board of trustees under section 7 of this act prior to the beginning of their terms of office on July 1, 2002." [2002 c 209 § 12.]

72.42.041 Powers and duties. The board of trustees of the center:

(1) Shall adopt rules and regulations for its own governance;

(2) Shall direct the development of, approve, and monitor the enforcement of policies, rules, and regulations pertaining to the school and the center, including but not limited to:

(a) The use of classrooms and other facilities for summer or night schools or for public meetings and any other uses consistent with the mission of the center;

(b) Pedestrian and vehicular traffic on property owned, operated, or maintained by the center;

(c) Governance, management, and operation of the residential facilities;

(d) Transferability of employees between the center and the school for the blind consistent with collective bargaining agreements in effect; and

(e) Compliance with state and federal education civil rights laws at the school;

(3) Shall develop a process for recommending candidates for the position of director and upon a vacancy shall submit a list of three qualified candidates for director to the governor;

(4) Shall submit an evaluation of the director to the governor by July 1st of each odd-numbered year that includes a recommendation regarding the retention of the director;

(5) May recommend to the governor at any time that the director be removed for conduct deemed by the board to be detrimental to the interests of the center;

(6) Shall prepare and submit by July 1st of each even-numbered year a report to the governor and the appropriate committees of the legislature which contains a detailed summary of the center's progress on performance objectives and the center's work, facility conditions, and revenues and costs of the center for the previous year and which contains those recommendations it deems necessary and advisable for the governor and the legislature to act on;

(7) Shall approve the center's budget and all funding requests, both operating and capital, submitted to the governor;

(8) Shall direct and approve the development and implementation of comprehensive programs of education, training, and as needed residential living, such that students served by the school receive a challenging and quality education in a safe school environment;

(9) Shall direct, monitor, and approve the implementation of a comprehensive continuous quality improvement system for the center;

(10) Shall monitor and inspect all existing facilities of the center and report its findings in its biennial report to the governor and appropriate committees of the legislature; and

(11) May grant to every student of the school, upon graduation or completion of a program or course of study, a suitable diploma, nonbaccalaureate degree, or certificate. [2009 c 381 § 17; 2002 c 209 § 8.]

Findings—Intent—2009 c 381: See note following RCW 72.40.015.

Effective date—2002 c 209: See note following RCW 72.42.021.

72.42.060 Travel expenses. Each member of the board of trustees shall receive travel expenses as provided in RCW 43.03.050 and 43.03.060 as now existing or hereafter

amended, and such payments shall be a proper charge to any funds appropriated or allocated for the support of the Washington state center for childhood deafness and hearing loss. [2009 c 381 § 22; 1975-'76 2nd ex.s. c 34 § 168; 1972 ex.s. c 96 § 6.]

Findings—Intent—2009 c 381: See note following RCW 72.40.015.

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

Chapter 72.64 RCW
LABOR AND EMPLOYMENT OF PRISONERS

Sections

72.64.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. *(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*

72.64.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. ***(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 170.]

Chapter 72.66 RCW
FURLOUGHS FOR PRISONERS

Sections

72.66.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. *(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*

72.66.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. ***(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 171.]

Title 73
VETERANS AND VETERANS' AFFAIRS

Chapters

73.08 Veterans' relief.
73.16 Employment and reemployment.

Chapter 73.08 RCW
VETERANS' RELIEF

Sections

73.08.005 Definitions.

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

(1) "Direct costs" includes those allowable costs that can be readily assigned to the statutory objectives of this chapter, consistent with the cost principles promulgated by the federal office of management and budget in circular No. A-87, dated May 10, 2004.

(2) "Family" means the spouse or domestic partner, surviving spouse, surviving domestic partner, and dependent children of a living or deceased veteran.

(3) "Indigent" means a person who is defined as such by the county legislative authority using one or more of the following definitions:

(a) Receiving one of the following types of public assistance: Temporary assistance for needy families, general assistance, poverty-related veterans' benefits, food stamps or food stamp benefits transferred electronically, refugee resettlement benefits, medicaid, or supplemental security income;

(b) Receiving an annual income, after taxes, of up to one hundred fifty percent or less of the current federally established poverty level, or receiving an annual income not exceeding a higher qualifying income established by the county legislative authority; or

(c) Unable to pay reasonable costs for shelter, food, utilities, and transportation because his or her available funds are insufficient.

(4) "Indirect costs" includes those allowable costs that are generally associated with carrying out the statutory objectives of this chapter, but the identification and tracking of those costs cannot be readily assigned to a specific statutory objective without an accounting effort that is disproportionate to the benefit received. A county legislative authority may allocate allowable indirect costs to its veterans' assistance fund if it is accomplished in a manner consistent with the cost principles promulgated by the federal office of management and budget in circular No. A-87, dated May 10, 2004.

(5) "Veteran" has the same meaning as defined in RCW 41.04.005 and 41.04.007, and includes a current member of the national guard or armed forces reserves who has been deployed to serve in an armed conflict.

(6) "Veterans' advisory board" means a board established by a county legislative authority under the authority of RCW 73.08.035.

(7) "Veterans' assistance fund" means an account in the custody of the county auditor, or the chief financial officer in a county operating under a charter, that is funded by taxes levied under the authority of RCW 73.08.080.

(8) "Veterans' assistance program" means a program approved by the county legislative authority under the authority of RCW 73.08.010 that is fully or partially funded by the veterans' assistance fund authorized by RCW 73.08.080. [2009 c 35 § 1; 2008 c 6 § 502; 2005 c 250 § 2.]

Part headings not law—Severability—2008 c 6: See RCW 26.60.900 and 26.60.901.

Intent—2005 c 250: "(1) It is the intent of the legislature that each county establish a veterans' assistance program to benefit indigent veterans and their families. These programs must be funded, at least in part, by veterans' assistance funds. The legislature intends also for each county to establish a veterans' advisory board responsible for advising the county legislative authority on needed and appropriate assistance programs for local indigent veterans and their families. Recognizing the valuable insight and perspectives that veterans offer, it is the intent of the legislature that each board be comprised entirely of veterans.

(2) The legislature recognizes that ongoing veterans' relief or assistance programs in some areas of the state have provided meaningful assistance to indigent veterans and family members. The legislature further recognizes that veterans' service organizations have traditionally been the initial point of contact for indigent veterans and family members seeking assistance. In recognition of these factors, the legislature intends to authorize, upon the satisfaction of certain administrative requirements, existing veterans' relief or assistance programs to continue providing needed and effective assistance to indigent veterans and their families.

(3) The legislature recognizes that counties respond to the needs of indigent veterans and family members in the manner most appropriate to the needs and resources of the county. The legislature intends for the provisions of this act to facilitate the effective use of assistance funds through efficient model programs that benefit veterans and family members experiencing financial hardships.

(4) It is the policy of the state of Washington that bias shall not play a role in the distribution of the veterans' assistance fund." [2005 c 250 § 1.]

Chapter 73.16 RCW
EMPLOYMENT AND REEMPLOYMENT

Sections

73.16.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. *(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*

73.16.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. ***(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 172.]

Title 74
PUBLIC ASSISTANCE

Chapters

74.04 General provisions—Administration.
74.08 Eligibility generally—Standards of assistance.
74.08A Washington workfirst temporary assistance for needy families.
74.09 Medical care.
74.09A Medical assistance—Coordination of benefits—Computerized information transfer.
74.12 Temporary assistance for needy families.
74.13 Child welfare services.
74.13A Adoption support.
74.14C Family preservation services.
74.15 Care of children, expectant mothers, developmentally disabled.
74.20 Support of dependent children.
74.20A Support of dependent children—Alternative method—1971 act.
74.32 Advisory committees on vendor rates.
74.34 Abuse of vulnerable adults.
74.39A Long-term care services options—Expansion.
74.41 Respite care services.
74.46 Nursing facility medicaid payment system.

Chapter 74.04 RCW
GENERAL PROVISIONS—ADMINISTRATION

Sections

74.04.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. *(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.) (Effective January 1, 2014.)*

74.04.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. ***(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.) (Effective January 1, 2014.)*** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 173.]

Effective dates—2009 c 521 §§ 5-8, 79, 87-103, 107, 151, 165, 166, 173-175, and 190-192: See note following RCW 2.10.900.

Chapter 74.08 RCW

ELIGIBILITY GENERALLY—STANDARDS OF ASSISTANCE

Sections

74.08.055 Verification of applications—Electronic applications—Penalty.
74.08.060 Action on applications—Ineligibility of inmates—Employment and training services. *(Effective November 1, 2009.)*

74.08.055 Verification of applications—Electronic applications—Penalty. (1) Each applicant for or recipient of public assistance shall complete and sign a physical application or, if available, electronic application for assistance which shall contain or be verified by a written declaration that it is signed under the penalties of perjury. The department may make electronic applications available. The secretary, by rule and regulation, may require that any other forms filled out by applicants or recipients of public assistance shall contain or be verified by a written declaration that it is made under the penalties of perjury and such declaration shall be in lieu of any oath otherwise required, and each applicant shall be so informed at the time of the signing. The application and signature verification shall be in accordance with federal requirements for that program.

(2) Any applicant for or recipient of public assistance who willfully makes and signs any application, statement, other paper, or electronic record which contains or is verified by a written declaration that it is made under the penalties of perjury and which he or she does not believe to be true and correct as to every material matter is guilty of a class B felony punishable according to chapter 9A.20 RCW.

(3) As used in this section:

(a) "Electronic record" means a record generated, communicated, received, or stored by electronic means for use in an information system or for transmission from one information system to another.

(b) "Electronic signature" means a signature in electronic form attached to or logically associated with an electronic record including, but not limited to, a digital signature. An electronic signature is a paperless way to sign a document using an electronic sound, symbol, or process, attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

(c) "Sign" includes signing by physical signature, if available, or electronic signature. An application must contain a signature in either physical or, if available, electronic form. [2009 c 201 § 1; 2003 c 53 § 366; 1979 c 141 § 323; 1959 c 26 § 74.08.055. Prior: 1953 c 174 § 27.]

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

74.08.060 Action on applications—Ineligibility of inmates—Employment and training services. ***(Effective November 1, 2009.)*** The department shall approve or deny the application within forty-five days after filing, and shall immediately notify the applicant in writing of its decision. If the department is not able within forty-five days, despite due diligence, to secure all information necessary to establish eligibility, the department shall continue to secure such information. If such information, when established, makes the applicant eligible, the department shall pay the grant from the date of authorization or forty-five days after the date of application, whichever is earlier, except that the department shall not make payments for any period of time in which the applicant is ineligible for public assistance as an inmate of a public institution under RCW 74.08.025(1)(c).

The department may, in respect to work requirements, provide employment and training services, including job search, job placement, work orientation, and necessary support services to verify eligibility. [2009 c 198 § 1; 1985 c 335 § 4; 1981 1st ex.s. c 6 § 13; 1969 ex.s. c 173 § 6; 1959 c 26 § 74.08.060. Prior: 1953 c 174 § 28; 1949 c 6 § 7; Rem. Supp. 1949 § 9998-33g.]

Effective date—2009 c 198: "This act takes effect November 1, 2009." [2009 c 198 § 2.]

Effective date—Severability—1981 1st ex.s. c 6: See notes following RCW 74.04.005.

Chapter 74.08A RCW

WASHINGTON WORKFIRST TEMPORARY ASSISTANCE FOR NEEDY FAMILIES

Sections

74.08A.130 Immigrants—Naturalization facilitation.
74.08A.250 "Work activity" defined.
74.08A.260 Work activity—Referral—Individual responsibility plan—Refusal to work.
74.08A.340 Funding restrictions.
74.08A.411 Outcome measures—Data—Report to the legislature.
74.08A.430 Repealed.
74.08A.905 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. *(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.) (Effective January 1, 2014.)*

74.08A.130 Immigrants—Naturalization facilitation. The department shall make an affirmative effort to identify and proactively contact legal immigrants receiving public assistance to facilitate their applications for naturalization. The department shall obtain a complete list of legal immigrants in Washington who are receiving correspondence regarding their eligibility from the social security administration. The department shall inform immigrants regarding how citizenship may be attained. In order to facilitate the citizenship process, the department shall coordinate and contract, to the extent necessary, with existing public and private resources and shall, within available funds, ensure that those immigrants who qualify to apply for naturalization are referred to or otherwise offered classes. The department shall assist eligible immigrants in obtaining appropriate test exemptions, and other exemptions in the naturalization process, to the extent permitted under federal law. [2009 c 518 § 6; 1997 c 58 § 204.]

74.08A.250 "Work activity" defined. Unless the context clearly requires otherwise, as used in this chapter, "work activity" means:

(1) Unsubsidized paid employment in the private or public sector;

(2) Subsidized paid employment in the private or public sector, including employment through the state or federal work-study program for a period not to exceed twenty-four months;

(3) Work experience, including:

(a) An internship or practicum, that is paid or unpaid and is required to complete a course of vocational training or to obtain a license or certificate in a high-demand occupation, as determined by the employment security department. No internship or practicum shall exceed twelve months; or

(b) Work associated with the refurbishing of publicly assisted housing, if sufficient paid employment is not available;

(4) On-the-job training;

(5) Job search and job readiness assistance;

(6) Community service programs;

(7) Vocational educational training, not to exceed twelve months with respect to any individual;

(8) Job skills training directly related to employment;

(9) Education directly related to employment, in the case of a recipient who has not received a high school diploma or a GED;

(10) Satisfactory attendance at secondary school or in a course of study leading to a GED, in the case of a recipient who has not completed secondary school or received such a certificate;

(11) The provision of child care services to an individual who is participating in a community service program;

(12) Internships, that shall be paid or unpaid work experience performed by an intern in a business, industry, or government or nongovernmental agency setting;

(13) Practicums, which include any educational program in which a student is working under the close supervision of a professional in an agency, clinic, or other professional practice setting for purposes of advancing their skills and knowledge;

(14) Services required by the recipient under RCW 74.08.025(3) and 74.08A.010(3) to become employable; and

(15) Financial literacy activities designed to be effective in assisting a recipient in becoming self-sufficient and financially stable. [2009 c 353 § 6; 2006 c 107 § 2; 2000 c 10 § 1; 1997 c 58 § 311.]

Findings—Intent—2006 c 107: "The legislature finds that for a variety of reasons, many citizens may lack the basic financial knowledge necessary to spend their money wisely, save for the future, and manage money challenges, such as a job loss, financing a college education, or a catastrophic injury. The legislature also finds that financial literacy is an essential element in achieving financial stability and self-sufficiency. The legislature intends to encourage participation in financial literacy training by WorkFirst participants, in order to promote their ability to make financial decisions that will contribute to their long-term financial well-being." [2006 c 107 § 1.]

Effective date—2006 c 107: "This act takes effect January 1, 2007." [2006 c 107 § 4.]

74.08A.260 Work activity—Referral—Individual responsibility plan—Refusal to work. (1) Each recipient shall be assessed after determination of program eligibility and before referral to job search. Assessments shall be based upon factors that are critical to obtaining employment, including but not limited to education, availability of child care, history of family violence, history of substance abuse, and other factors that affect the ability to obtain employment. Assessments may be performed by the department or by a contracted entity. The assessment shall be based on a uniform, consistent, transferable format that will be accepted by all agencies and organizations serving the recipient. Based on the assessment, an individual responsibility plan shall be prepared that: (a) Sets forth an employment goal and a plan for maximizing the recipient's success at meeting the employment goal; (b) considers WorkFirst educational and training programs from which the recipient could benefit; (c) contains the obligation of the recipient to participate in the program by complying with the plan; (d) moves the recipient into full-time WorkFirst activities as quickly as possible; and (e) describes the services available to the recipient either during or after WorkFirst to enable the recipient to obtain and keep employment and to advance in the workplace and increase the recipient's wage earning potential over time.

(2) Recipients who are not engaged in work and work activities, and do not qualify for a good cause exemption under RCW 74.08A.270, shall engage in self-directed service as provided in RCW 74.08A.330.

(3) If a recipient refuses to engage in work and work activities required by the department, the family's grant shall be reduced by the recipient's share, and may, if the department determines it appropriate, be terminated.

(4) The department may waive the penalties required under subsection (3) of this section, subject to a finding that the recipient refused to engage in work for good cause provided in RCW 74.08A.270.

(5) In implementing this section, the department shall assign the highest priority to the most employable clients, including adults in two-parent families and parents in single-parent families that include older preschool or school-age children to be engaged in work activities.

(6) In consultation with the recipient, the department or contractor shall place the recipient into a work activity that is available in the local area where the recipient resides.

(7) Assessments conducted under this section shall include a consideration of the potential benefit to the recipient of engaging in financial literacy activities. The department shall consider the options for financial literacy activities available in the community, including information and resources available through the financial literacy public-private partnership created under RCW 28A.300.450. The department may authorize up to ten hours of financial literacy activities as a core activity or an optional activity under WorkFirst. [2009 c 85 § 2; 2006 c 107 § 3; 2003 c 383 § 1; 1997 c 58 § 313.]

Findings—Intent—Effective date—2006 c 107: See notes following RCW 74.08A.250.

74.08A.340 Funding restrictions. The department of social and health services shall operate the Washington WorkFirst program authorized under RCW 74.08A.200 through 74.08A.330, 43.330.145, 43.215.545, and 74.25.040, and chapter 74.12 RCW within the following constraints:

(1) The full amount of the temporary assistance for needy families block grant, plus qualifying state expenditures as appropriated in the biennial operating budget, shall be appropriated to the department each year in the biennial appropriations act to carry out the provisions of the program authorized in RCW 74.08A.200 through 74.08A.330, 43.330.145, 43.215.545, and 74.25.040, and chapter 74.12 RCW.

(2)(a) The department may expend funds defined in subsection (1) of this section in any manner that will effectively accomplish the outcome measures defined in RCW

74.08A.410 with the following exception: Beginning with the 2007-2009 biennium, funds that constitute the working connections child care program, child care quality programs, and child care licensing functions.

(b) Beginning in the 2007-2009 fiscal biennium, the legislature shall appropriate and the departments of early learning and social and health services shall expend funds defined in subsection (1) of this section that constitute the working connections child care program, child care quality programs, and child care licensing functions in a manner that is consistent with the outcome measures defined in RCW 74.08A.410.

(c) No more than fifteen percent of the amount provided in subsection (1) of this section may be spent for administrative purposes. For the purpose of this subsection, "administrative purposes" does not include expenditures for information technology and computerization needed for tracking and monitoring required by P.L. 104-193. The department shall not increase grant levels to recipients of the program authorized in RCW 74.08A.200 through 74.08A.330 and 43.330.145 and chapter 74.12 RCW, except as authorized in the omnibus appropriations act for the 2009-2011 biennium.

(3) The department shall implement strategies that accomplish the outcome measures identified in RCW 74.08A.410 that are within the funding constraints in this section. Specifically, the department shall implement strategies that will cause the number of cases in the program authorized in RCW 74.08A.200 through 74.08A.330 and 43.330.145 and chapter 74.12 RCW to decrease by at least fifteen percent during the 1997-99 biennium and by at least five percent in the subsequent biennium. The department may transfer appropriation authority between funding categories within the economic services program in order to carry out the requirements of this subsection.

(4) The department shall monitor expenditures against the appropriation levels provided for in subsection (1) of this section. The department shall quarterly make a determination as to whether expenditure levels will exceed available funding and communicate its finding to the legislature. If the determination indicates that expenditures will exceed funding at the end of the fiscal year, the department shall take all necessary actions to ensure that all services provided under this chapter shall be made available only to the extent of the availability and level of appropriation made by the legislature. [2009 c 564 § 953; 2008 c 329 § 922; 2007 c 522 § 957; 2006 c 265 § 209; 1997 c 58 § 321.]

Effective date—2009 c 564: See note following RCW 2.68.020.

Severability—Effective date—2008 c 329: See notes following RCW 28B.105.110.

Severability—Effective date—2007 c 522: See notes following RCW 15.64.050.

Part headings not law—Effective date—Severability—2006 c 265: See RCW 43.215.904 through 43.215.906.

74.08A.411 Outcome measures—Data—Report to the legislature. The department shall continue to implement WorkFirst program improvements that are designed to achieve progress against outcome measures specified in RCW 74.08A.410. Outcome data regarding job retention and wage progression shall be reported quarterly to appropriate fiscal and policy committees of the legislature for families who leave assistance, measured after twelve months, twenty-four months, and thirty-six months. The department shall also report the percentage of families who have returned to temporary assistance for needy families after twelve months, twenty-four months, and thirty-six months. The department shall make every effort to maximize vocational training, as allowed by federal and state requirements. [2009 c 85 § 3.]

74.08A.430 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

74.08A.905 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. ***(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.) (Effective January 1, 2014.)*** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 174.]

Effective dates—2009 c 521 §§ 5-8, 79, 87-103, 107, 151, 165, 166, 173-175, and 190-192: See note following RCW 2.10.900.

Chapter 74.09 RCW
MEDICAL CARE

Sections

74.09.053 Annual reporting requirement *(as amended by 2009 c 479)*.
74.09.053 Annual reporting requirement *(as amended by 2009 c 568)*.
74.09.470 Children's affordable health coverage—Department duties.
74.09.480 Performance measures—Provider rate increases—Report.
74.09.521 Medical assistance—Program standards for mental health services for children.
74.09.5222 Medical assistance—Section 1115 demonstration waiver request.
74.09.5241 through 74.09.5256 Repealed.
74.09.658 Home health—Reimbursement—Telemedicine.
74.09.659 Family planning waiver program request.
74.09.730 Disproportionate share hospital adjustment.
74.09.740 Repealed.
74.09.920 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. *(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.) (Effective January 1, 2014.)*

74.09.053 Annual reporting requirement *(as amended by 2009 c 479)*. (1) The department of social and health services, in coordination with the health care authority, shall by November 15th of each year report to the legislature:

(a) The number of medical assistance recipients who: (i) Upon enrollment or recertification had reported being employed, and beginning with the 2008 report, the month and year they reported being hired; or (ii) upon enrollment or recertification had reported being the dependent of someone who was employed, and beginning with the 2008 report, the month and year they reported the employed person was hired. For recipients identified under (a)(i) and (ii) of this subsection, the department shall report the basis for their medical assistance eligibility, including but not limited to family medical coverage, transitional medical assistance, children's medical ((~~or aged or~~

~~disabled~~)) coverage, aged coverage, or coverage for persons with disabilities; member months; and the total cost to the state for these recipients, expressed as general fund-state((~~, health services account~~)) and general fund-federal dollars. The information shall be reported by employer (([~~size~~])) size for employers having more than fifty employees as recipients or with dependents as recipients. This information shall be provided for the preceding January and June of that year.

(b) The following aggregated information: (i) The number of employees who are recipients or with dependents as recipients by private and governmental employers; (ii) the number of employees who are recipients or with dependents as recipients by employer size for employers with fifty or fewer employees, fifty-one to one hundred employees, one hundred one to one thousand employees, one thousand one to five thousand employees and more than five thousand employees; and (iii) the number of employees who are recipients or with dependents as recipients by industry type.

(([~~(2)~~])) (2) For each aggregated classification, the report will include the number of hours worked, the number of department of social and health services covered lives, and the total cost to the state for these recipients. This information shall be for each quarter of the preceding year. [2009 c 479 § 62; 2006 c 264 § 2.]

Effective date—2009 c 479: See note following RCW 2.56.030.

74.09.053 Annual reporting requirement ***(as amended by 2009 c 568).*** (1) Beginning in November 2012, the department of social and health services, in coordination with the health care authority, shall by November 15th of each year report to the legislature:

(a) The number of medical assistance recipients who: (i) Upon enrollment or recertification had reported being employed, and beginning with the 2008 report, the month and year they reported being hired; or (ii) upon enrollment or recertification had reported being the dependent of someone who was employed, and beginning with the 2008 report, the month and year they reported the employed person was hired. For recipients identified under (a)(i) and (ii) of this subsection, the department shall report the basis for their medical assistance eligibility, including but not limited to family medical coverage, transitional medical assistance, children's medical or aged or ((~~disabled~~)) individuals with disabilities coverage; member months; and the total cost to the state for these recipients, expressed as general fund-state, health services account and general fund-federal dollars. The information shall be reported by employer (([~~size~~])) size for employers having more than fifty employees as recipients or with dependents as recipients. This information shall be provided for the preceding January and June of that year.

(b) The following aggregated information: (i) The number of employees who are recipients or with dependents as recipients by private and governmental employers; (ii) the number of employees who are recipients or with dependents as recipients by employer size for employers with fifty or fewer employees, fifty-one to one hundred employees, one hundred one to one thousand employees, one thousand one to five thousand employees and more than five thousand employees; and (iii) the number of employees who are recipients or with dependents as recipients by industry type.

(([~~(2)~~])) (2) For each aggregated classification, the report will include the number of hours worked, the number of department of social and health services covered lives, and the total cost to the state for these recipients. This information shall be for each quarter of the preceding year. [2009 c 568 § 6; 2006 c 264 § 2.]

Reviser's note: RCW 74.09.053 was amended twice during the 2009 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

74.09.470 Children's affordable health coverage—Department duties. (1) Consistent with the goals established in RCW 74.09.402, through the apple health for kids program authorized in this section, the department shall provide affordable health care coverage to children under the age of nineteen who reside in Washington state and whose family income at the time of enrollment is not greater than two hundred fifty percent of the federal poverty level as adjusted for family size and determined annually by the federal department of health and human services, and effective January 1, 2009, and only to the extent that funds are specifically appropriated therefor, to children whose family income is not greater than three hundred percent of the federal poverty level. In administering the program, the department shall take such actions as may be necessary to ensure the receipt of federal financial participation under the medical assistance program, as codified at Title XIX of the federal social security act, the state children's health insurance program, as codified at Title XXI of the federal social security act, and any other federal funding sources that are now available or may become available in the future. The department and the caseload forecast council shall estimate the anticipated caseload and costs of the program established in this section.

(2) The department shall accept applications for enrollment for children's health care coverage; establish appropriate minimum-enrollment periods, as may be necessary; and determine eligibility based on current family income. The department shall make eligibility determinations within the time frames for establishing eligibility for children on medical assistance, as defined by RCW 74.09.510. The application and annual renewal processes shall be designed to minimize administrative barriers for applicants and enrolled clients, and to minimize gaps in eligibility for families who are eligible for coverage. If a change in family income results in a change in the source of funding for coverage, the department shall transfer the family members to the appropriate source of funding and notify the family with respect to any change in premium obligation, without a break in eligibility. The department shall use the same eligibility redetermination and appeals procedures as those provided for children on medical assistance programs. The department shall modify its eligibility renewal procedures to lower the percentage of children failing to annually renew. The department shall manage its outreach, application, and renewal procedures with the goals of: (a) Achieving year by year improvements in enrollment, enrollment rates, renewals, and renewal rates; (b) maximizing the use of existing program databases to obtain information related to earned and unearned income for purposes of eligibility determination and renewals, including, but not limited to, the basic food program, the child care subsidy program, federal social security administration programs, and the employment security department wage database; (c) streamlining renewal processes to rely primarily upon data matches, online submissions, and telephone interviews; and (d) implementing any other eligibility determination and renewal processes to allow the state to receive an enhanced federal matching rate and additional federal outreach funding available through the federal children's health insurance program reauthorization act of 2009 by January 2010. The department shall advise the governor and the legislature regarding the status of these efforts by September 30, 2009. The information provided should include the status of the department's efforts, the anticipated impact of those efforts on enrollment, and the costs associated with that enrollment.

(3) To ensure continuity of care and ease of understanding for families and health care providers, and to maximize the efficiency of the program, the amount, scope, and duration of health care services provided to children under this section shall be the same as that provided to children under medical assistance, as defined in RCW 74.09.520.

(4) The primary mechanism for purchasing health care coverage under this section shall be through contracts with

managed health care systems as defined in RCW 74.09.522, subject to conditions, limitations, and appropriations provided in the biennial appropriations act. However, the department shall make every effort within available resources to purchase health care coverage for uninsured children whose families have access to dependent coverage through an employer-sponsored health plan or another source when it is cost-effective for the state to do so, and the purchase is consistent with requirements of Title XIX and Title XXI of the federal social security act. To the extent allowable under federal law, the department shall require families to enroll in available employer-sponsored coverage, as a condition of participating in the program established under this section, when it is cost-effective for the state to do so. Families who enroll in available employer-sponsored coverage under this section shall be accounted for separately in the annual report required by RCW 74.09.053.

(5)(a) To reflect appropriate parental responsibility, the department shall develop and implement a schedule of premiums for children's health care coverage due to the department from families with income greater than two hundred percent of the federal poverty level. For families with income greater than two hundred fifty percent of the federal poverty level, the premiums shall be established in consultation with the senate majority and minority leaders and the speaker and minority leader of the house of representatives. Premiums shall be set at a reasonable level that does not pose a barrier to enrollment. The amount of the premium shall be based upon family income and shall not exceed the premium limitations in Title XXI of the federal social security act. Premiums shall not be imposed on children in households at or below two hundred percent of the federal poverty level as articulated in RCW 74.09.055.

(b) Beginning no later than January 1, 2010, the department shall offer families whose income is greater than three hundred percent of the federal poverty level the opportunity to purchase health care coverage for their children through the programs administered under this section without an explicit premium subsidy from the state. The design of the health benefit package offered to these children should provide a benefit package substantially similar to that offered in the apple health for kids program, and may differ with respect to cost-sharing, and other appropriate elements from that provided to children under subsection (3) of this section including, but not limited to, application of preexisting conditions, waiting periods, and other design changes needed to offer affordable coverage. The amount paid by the family shall be in an amount equal to the rate paid by the state to the managed health care system for coverage of the child, including any associated and administrative costs to the state of providing coverage for the child. Any pooling of the program enrollees that results in state fiscal impact must be identified and brought to the legislature for consideration.

(6) The department shall undertake and continue a proactive, targeted outreach and education effort with the goal of enrolling children in health coverage and improving the health literacy of youth and parents. The department shall collaborate with the department of health, local public health jurisdictions, the office of the superintendent of public instruction, the department of early learning, health educators, health care providers, health carriers, community-based organizations, and parents in the design and development of this effort. The outreach and education effort shall include the following components:

(a) Broad dissemination of information about the availability of coverage, including media campaigns;

(b) Assistance with completing applications, and community-based outreach efforts to help people apply for coverage. Community-based outreach efforts should be targeted to the populations least likely to be covered;

(c) Use of existing systems, such as enrollment information from the free and reduced-price lunch program, the department of early learning child care subsidy program, the department of health's women, infants, and children program, and the early childhood education and assistance program, to identify children who may be eligible but not enrolled in coverage;

(d) Contracting with community-based organizations and government entities to support community-based outreach efforts to help families apply for coverage. These efforts should be targeted to the populations least likely to be covered. The department shall provide informational materials for use by government entities and community-based organizations in their outreach activities, and should identify any available federal matching funds to support these efforts;

(e) Development and dissemination of materials to engage and inform parents and families statewide on issues such as: The benefits of health insurance coverage; the appropriate use of health services, including primary care provided by health care practitioners licensed under chapters 18.71, 18.57, 18.36A, and 18.79 RCW, and emergency services; the value of a medical home, well-child services and immunization, and other preventive health services with linkages to department of health child profile efforts; identifying and managing chronic conditions such as asthma and diabetes; and the value of good nutrition and physical activity;

(f) An evaluation of the outreach and education efforts, based upon clear, cost-effective outcome measures that are included in contracts with entities that undertake components of the outreach and education effort;

(g) An implementation plan to develop online application capability that is integrated with the department's automated client eligibility system, and to develop data linkages with the office of the superintendent of public instruction for free and reduced-price lunch enrollment information and the department of early learning for child care subsidy program enrollment information.

(7) The department shall take action to increase the number of primary care physicians providing dental disease preventive services including oral health screenings, risk assessment, family education, the application of fluoride varnish, and referral to a dentist as needed.

(8) The department shall monitor the rates of substitution between private-sector health care coverage and the coverage provided under this section and shall report to appropriate committees of the legislature by December 2010. [2009 c 463 § 2; 2007 c 5 § 2.]

Findings—Intent—2009 c 463: "The legislature finds that substantial progress has been made toward achieving the equally important goals set in 2007 that all children in Washington state have health care coverage by 2010 and that child health outcomes improve. The legislature also finds that continued steps are necessary to reach the goals that all children in Washington state shall have access to the health services they need to be healthy and

ready to learn and that key measures of child health outcomes will show year by year improvement. The legislature further finds that reaching these goals is integral to the state's ability to weather the current economic crisis. The recent reauthorization of the federal children's health insurance program provides additional opportunities for the state to reach these goals. In view of these important objectives, the legislature intends that the apple health for kids program be managed actively across administrations in the department of social and health services, and across state and local agencies, with clear accountability for achieving the intended program outcomes. The legislature further intends that the department continue the implementation of the apple health for kids program with a commitment to fully utilizing the new program identity with appropriate materials." [2009 c 463 § 1.]

Short title—2009 c 463: "This act may be known and cited as the apple health for kids act." [2009 c 463 § 5.]

74.09.480 Performance measures—Provider rate increases—Report. (1) The department, in collaboration with the department of health, health carriers, local public health jurisdictions, children's health care providers including pediatricians, family practitioners, and pediatric subspecialists, community and migrant health centers, parents, and other purchasers, shall establish a concise set of explicit performance measures that can indicate whether children enrolled in the program are receiving health care through an established and effective medical home, and whether the overall health of enrolled children is improving. Such indicators may include, but are not limited to:

(a) Childhood immunization rates;

(b) Well child care utilization rates, including the use of behavioral and oral health screening, and validated, structured developmental screens using tools, that are consistent with nationally accepted pediatric guidelines and recommended administration schedule, once funding is specifically appropriated for this purpose;

(c) Care management for children with chronic illnesses;

(d) Emergency room utilization;

(e) Visual acuity and eye health;

(f) Preventive oral health service utilization; and

(g) Children's mental health status. In defining these measures the department shall be guided by the measures provided in RCW 71.36.025.

Performance measures and targets for each performance measure must be established and monitored each biennium, with a goal of achieving measurable, improved health outcomes for the children of Washington state each biennium.

(2) Beginning in calendar year 2009, targeted provider rate increases shall be linked to quality improvement measures established under this section. The department, in conjunction with those groups identified in subsection (1) of this section, shall develop parameters for determining criteria for increased payment, alternative payment methodologies, or other incentives for those practices and health plans that incorporate evidence-based practice and improve and achieve sustained improvement with respect to the measures.

(3) The department shall provide a report to the governor and the legislature related to provider performance on these measures, beginning in September 2010 for 2007 through 2009 and biennially thereafter. The department shall advise the legislature as to its progress towards developing this biennial reporting system by September 30, 2009. [2009 c 463 § 4; 2007 c 5 § 4.]

Findings—Intent—Short title—2009 c 463: See notes following RCW 74.09.470.

74.09.521 Medical assistance—Program standards for mental health services for children. (1) To the extent that funds are specifically appropriated for this purpose the department shall revise its medicaid healthy options managed care and fee-for-service program standards under medicaid, Title XIX of the federal social security act to improve access to mental health services for children who do not meet the regional support network access to care standards. Effective July 1, 2008, the program standards shall be revised to allow outpatient therapy services to be provided by licensed mental health professionals, as defined in RCW 71.34.020, or by a mental health professional regulated under Title 18 RCW who is under the direct supervision of a licensed mental health professional, and up to twenty outpatient therapy hours per calendar year, including family therapy visits integral to a child's treatment. This section shall be administered in a manner consistent with federal early periodic screening, diagnosis, and treatment requirements related to the receipt of medically necessary services when a child's need for such services is identified through developmental screening.

(2) The department and the children's mental health evidence-based practice institute established in RCW 71.24.061 shall collaborate to encourage and develop incentives for the use of prescribing practices and evidence-based and research-based treatment practices developed under RCW 74.09.490 by mental health professionals serving children under this section. [2009 c 388 § 1; 2007 c 359 § 11.]

Captions not law—2007 c 359: See note following RCW 71.36.005.

74.09.5222 Medical assistance—Section 1115 demonstration waiver request. (1) The department shall submit a section 1115 demonstration waiver request to the federal department of health and human services to expand and revise the medical assistance program as codified in Title XIX of the federal social security act. The waiver request should be designed to ensure the broadest federal financial participation under Title XIX and XXI of the federal social security act. To the extent permitted under federal law, the waiver request should include the following components:

(a) Establishment of a single eligibility standard for low-income persons, including expansion of categorical eligibility to include childless adults. The department shall request that the single eligibility standard be phased in such that incremental steps are taken to cover additional low-income parents and individuals over time, with the goal of offering coverage to persons with household income at or below two hundred percent of the federal poverty level;

(b) Establishment of a single seamless application and eligibility determination system for all state low-income medical programs included in the waiver. Applications may be electronic and may include an electronic signature for verification and authentication. Eligibility determinations should maximize federal financing where possible;

(c) The delivery of all low-income coverage programs as a single program, with a common core benefit package that may be similar to the basic health benefit package or an alternative benefit package approved by the secretary of the federal department of health and human services, including the option of supplemental coverage for select categorical groups, such as children, and individuals who are aged, blind, and disabled;

(d) A program design to include creative and innovative approaches such as: Coverage for preventive services with incentives to use appropriate preventive care; enhanced medical home reimbursement and bundled payment methodologies; cost-sharing options; use of care management and care coordination programs to improve coordination of medical and behavioral health services; application of an innovative predictive risk model to better target care management services; and mandatory enrollment in managed care, as may be necessary;

(e) The ability to impose enrollment limits or benefit design changes for eligibility groups that were not eligible under the Title XIX state plan in effect on the date of submission of the waiver application;

(f) A premium assistance program whereby employers can participate in coverage options for employees and dependents of employees otherwise eligible under the waiver. The waiver should make every effort to maximize enrollment in employer-sponsored health insurance when it is cost-effective for the state to do so, and the purchase is consistent with the requirements of Titles XIX and XXI of the federal social security act. To the extent allowable under federal law, the department shall require enrollment in available employer-sponsored coverage as a condition of eligibility for coverage under the waiver; and

(g) The ability to share savings that might accrue to the federal medicare program, Title XVIII of the federal social security act, from improved care management for persons who are eligible for both medicare and medicaid. Through the waiver application process, the department shall determine whether the state could serve, directly or by contract, as a medicare special needs plan for persons eligible for both medicare and medicaid.

(2) The department shall hold ongoing stakeholder discussions as it is developing the waiver request, and provide opportunities for public review and comment as the request is being developed.

(3) The department and the health care authority shall identify statutory changes that may be necessary to ensure successful and timely implementation of the waiver request as submitted to the federal department of health and human services as the apple health program for adults.

(4) The legislature must authorize implementation of any waiver approved by the federal department of health and human services under this section. [2009 c 545 § 4.]

Findings—2009 c 545: See note following RCW 43.06.155.

74.09.5241 through 74.09.5256 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

74.09.658 Home health—Reimbursement—Telemedicine. (1) The home health program shall require registered nurse oversight and intervention, as appropriate. In-person contact between a home health care registered nurse and a patient is not required under the state's medical assistance program for home health services that are: (a) Delivered with the assistance of telemedicine and (b) otherwise eligible for reimbursement as a medically necessary skilled home health nursing visit under the program.

(2) The department in consultation with home health care service providers shall develop reimbursement rules and, in rule, define the requirements that must be met for a reimbursable skilled nursing visit when services are rendered without a face-to-face visit and are assisted by telemedicine.

(3)(a) The department shall establish the reimbursement rate for skilled home health nursing services delivered with the assistance of telemedicine that meet the requirements of a reimbursable visit as defined by the department.

(b) Reimbursement is not provided for purchase or lease of telemedicine equipment.

(4) Any home health agency licensed under chapter 70.127 RCW and eligible for reimbursement under the medical programs authorized under this chapter may be reimbursed for services under this section if the service meets the requirements for a reimbursable skilled nursing visit as defined by the department.

(5) Nothing in this section shall be construed to alter the scope of practice of any home health care services provider or authorizes the delivery of home health care services in a setting or manner not otherwise authorized by law.

(6) The use of telemedicine is not intended to replace registered nurse health care visit[s] when necessary.

(7) For the purposes of this section, "telemedicine" means the use of telemonitoring to enhance the delivery of certain home health medical services through:

(a) The provision of certain education related to health care services using audio, video, or data communication instead of a face-to-face visit; or

(b) The collection of clinical data and the transmission of such data between a patient at a distant location and the home health provider through electronic processing technologies. Objective clinical data that may be transmitted includes, but is not limited to, weight, blood pressure, pulse, respirations, blood glucose, and pulse oximetry. [2009 c 326 § 1.]

74.09.659 Family planning waiver program request. (1) The department shall continue to submit applications for the family planning waiver program.

(2) The department shall submit a request to the federal department of health and human services to amend the current family planning waiver program as follows:

(a) Provide coverage for sexually transmitted disease testing and treatment;

(b) Return to the eligibility standards used in 2005 including, but not limited to, citizenship determination based on declaration or matching with federal social security databases, insurance eligibility standards comparable to 2005, and confidential service availability for minors and survivors of domestic and sexual violence; and

(c) Within available funds, increase income eligibility to two hundred fifty percent of the federal poverty level, to correspond with income eligibility for publicly funded maternity care services. [2009 c 545 § 5.]

Findings—2009 c 545: See note following RCW 43.06.155.

74.09.730 Disproportionate share hospital adjustment. In establishing Title XIX payments for inpatient hospital services:

(1) To the extent funds are appropriated specifically for this purpose, and subject to any conditions placed on appropriations made for this purpose, the department of social and health services shall provide a disproportionate share hospital adjustment considering the following components:

(a) A low-income care component based on a hospital's medicaid utilization rate, its low-income utilization rate, its provision of obstetric services, and other factors authorized by federal law;

(b) A medical indigency care component based on a hospital's services to persons who are medically indigent; and

(c) A state-only component, to be paid from available state funds to hospitals that do not qualify for federal payments under (b) of this subsection, based on a hospital's services to persons who are medically indigent;

(2) The payment methodology for disproportionate share hospitals shall be specified by the department in regulation. [2009 c 538 § 1; 1991 sp.s. c 9 § 8; 1989 c 260 § 1; 1987 1st ex.s. c 5 § 20.]

Effective dates—1991 sp.s. c 9: See note following RCW 74.09.700.

Severability—1987 1st ex.s. c 5: See note following RCW 70.47.901.

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

74.09.920 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. ***(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.) (Effective January 1, 2014.)*** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 175.]

Effective dates—2009 c 521 §§ 5-8, 79, 87-103, 107, 151, 165, 166, 173-175, and 190-192: See note following RCW 2.10.900.

Chapter 74.09A RCW

MEDICAL ASSISTANCE—COORDINATION OF BENEFITS—COMPUTERIZED INFORMATION TRANSFER

Sections

74.09A.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. *(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*

74.09A.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. ***(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 176.]

Chapter 74.12 RCW

TEMPORARY ASSISTANCE FOR NEEDY FAMILIES

Sections

74.12.410 Family planning information—Cooperation with the superintendent of public instruction.

74.12.410 Family planning information—Cooperation with the superintendent of public instruction. (1) At the time of application or reassessment under this chapter the department shall offer or contract for family planning information and assistance, including alternatives to abortion, and any other available locally based unintended pregnancy prevention programs, to prospective and current recipients of temporary assistance for needy families.

(2) The department shall work in cooperation with the superintendent of public instruction to reduce the rate of abortions and unintended pregnancies in Washington state. [2009 c 303 § 2; 1997 c 58 § 601; 1994 c 299 § 3.]

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

Intent—Finding—Severability—Conflict with federal requirements—1994 c 299: See notes following RCW 74.12.400.

Chapter 74.13 RCW

CHILD WELFARE SERVICES

Sections

74.13.010 Declaration of purpose.
74.13.020 Definitions—"Child," "child welfare services"—Duty to provide services to homeless families with children *(as amended by 2009 c 235)*.
74.13.020 Definitions *(as amended by 2009 c 520)*.
74.13.029 Dependency established—Social worker's duty to provide document containing information.
74.13.031 Duties of department—Child welfare services—Children's services advisory committee *(as amended by 2009 c 235). (Effective until October 1, 2010.)*
74.13.031 Duties of department—Child welfare services—Children's services advisory committee *(as amended by 2009 c 235). (Effective October 1, 2010.)*
74.13.031 Duties of department—Child welfare services—Children's services advisory committee *(as amended by 2009 c 491)*.
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74.13.0311 Services provided under deferred prosecution order.
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74.13.036 Implementation of chapters 13.32A and 13.34 RCW.
74.13.037 Transitional living programs for youth in the process of being emancipated—Rules.
74.13.042 Petition for order compelling disclosure of record or information.
74.13.045 Complaint resolution process.
74.13.055 Foster care—Length of stay—Cooperation with supervising agencies.
74.13.060 Secretary as custodian of funds of person placed with department or its agent—Authority—Limitations—Termination.
74.13.065 Out-of-home care—Social study required.
74.13.075 Sexually aggressive youth—Defined—Services—Expenditure of treatment funds—Tribal jurisdiction—Information sharing and confidentiality.
74.13.077 Sexually aggressive youth—Transfer of surplus funds for treatment.
74.13.085 Recodified as RCW 43.215.495.
74.13.0902 Recodified as RCW 43.215.550.
74.13.095 Recodified as RCW 43.215.555.
74.13.096 Representation of children of color—Advisory committee. *(Expires June 30, 2014.)*
74.13.100 Recodified as RCW 74.13A.005.
74.13.103 Recodified as RCW 74.13A.010.
74.13.106 Recodified as RCW 74.13A.015.
74.13.109 Recodified as RCW 74.13A.020.
74.13.112 Recodified as RCW 74.13A.025.
74.13.115 Recodified as RCW 74.13A.030.
74.13.116 Recodified as RCW 74.13A.035.
74.13.118 Recodified as RCW 74.13A.040.
74.13.121 Recodified as RCW 74.13A.045.
74.13.124 Recodified as RCW 74.13A.050.
74.13.127 Recodified as RCW 74.13A.055.
74.13.130 Recodified as RCW 74.13A.060.
74.13.133 Recodified as RCW 74.13A.065.
74.13.136 Recodified as RCW 74.13A.070.
74.13.139 Recodified as RCW 74.13A.075.
74.13.145 Recodified as RCW 74.13A.080.
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74.13.152 Recodified as RCW 74.13A.090.
74.13.153 Recodified as RCW 74.13A.095.
74.13.154 Recodified as RCW 74.13A.100.
74.13.155 Recodified as RCW 74.13A.105.
74.13.156 Recodified as RCW 74.13A.110.
74.13.157 Recodified as RCW 74.13A.115.
74.13.158 Recodified as RCW 74.13A.120.
74.13.159 Recodified as RCW 74.13A.125.
74.13.165 Recodified as RCW 74.13A.130.
74.13.170 Therapeutic family home program for youth in custody under chapter 13.34 RCW.
74.13.200 Repealed.
74.13.210 Repealed.
74.13.220 Repealed.
74.13.230 Repealed.
74.13.232 Services to homeless families.
74.13.250 Preservice training—Foster parents.
74.13.280 Client information.
74.13.283 Washington state identicards—Foster youth.
74.13.285 Passports—Information to be provided to foster parents.
74.13.288 Blood-borne pathogens—Testing.
74.13.289 Blood-borne pathogens—Client information—Training.
74.13.290 Fewest possible placements for children—Preferred placements.
74.13.300 Notification of proposed placement changes.
74.13.310 Foster parent training.
74.13.315 Child care for foster parents attending meetings or training.
74.13.320 Printing informational materials—Department's duty.
74.13.325 Foster care and adoptive home recruitment program.
74.13.333 Rights of foster parents—Complaints—Investigation—Notice of any personnel action—Report.
74.13.334 Department and supervising agency's procedures to respond to foster parents' complaints.
74.13.340 Repealed.
74.13.360 Performance-based contracts—Child welfare demonstration sites—Department duties—Contracts with tribes.
74.13.362 Performance-based contracts—Legislative mandate.
74.13.364 Performance-based contracts—State authority.
74.13.366 Performance-based contracts—Preference for qualifying private nonprofit entities—Tribal exclusion.
74.13.368 Performance-based contracts—Child welfare transformation design committee. *(Expires July 1, 2015.)*
74.13.370 Performance-based contracts—Washington state institute for public policy report.
74.13.372 Performance-based contracts—Determination of expansion of delivery of child welfare services by contractors—Governor's duty.
74.13.500 Disclosure of child welfare records—Factors—Exception.
74.13.515 Disclosure of child welfare records—Fatalities.
74.13.525 Disclosure of child welfare records—Immunity from liability.
74.13.530 Child placement—Conflict of interest.
74.13.560 Educational continuity—Protocol development.
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74.13.600 Kinship caregivers—Definition—Placement of children with kin a priority—Strategies.
74.13.621 Kinship care oversight committee. *(Expires June 30, 2011.)*
74.13.630 Repealed.
74.13.640 Child fatality review—Report—Notice to the office of the family and children's ombudsman.
74.13.650 Foster parent critical support and retention program.
74.13.670 Care provider immunity for allegation of failure to supervise a sexually reactive, physically assaultive, or physically aggressive youth—Conditions.
74.13.800 Repealed.
74.13.901 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. *(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*

74.13.010 Declaration of purpose. The purpose of this chapter is to safeguard, protect, and contribute to the welfare of the children of the state, through a comprehensive and coordinated program of child welfare services provided by both the department and supervising agencies providing for: Social services and facilities for children who require guidance, care, control, protection, treatment, or rehabilitation; setting of standards for social services and facilities for children; cooperation with public and voluntary agencies, organizations, and citizen groups in the development and coordination of programs and activities in behalf of children; and promotion of community conditions and resources that help parents to discharge their responsibilities for the care, development, and well-being of their children. [2009 c 520 § 49; 1965 c 30 § 2.]

74.13.020 Definitions—"Child," "child welfare services"—Duty to provide services to homeless families with children *(as amended by 2009 c 235)*. As used in Title 74 RCW, child welfare services shall be defined as public social services including adoption services which strengthen, supplement, or substitute for, parental care and supervision for the purpose of:

(1) Preventing or remedying, or assisting in the solution of problems which may result in families in conflict, or the neglect, abuse, exploitation, or criminal behavior of children;

(2) Protecting and caring for dependent or neglected children;

(3) Assisting children who are in conflict with their parents, and assisting parents who are in conflict with their children with services designed to resolve such conflicts;

(4) Protecting and promoting the welfare of children, including the strengthening of their own homes where possible, or, where needed;

(5) Providing adequate care of children away from their homes in foster family homes or day care or other child care agencies or facilities.

As used in this chapter((~~, child~~)) and except as specifically provided in RCW 74.13.031 (10) and (11), "child" means a person less than eighteen years of age.

The department's duty to provide services to homeless families with children is set forth in RCW 43.20A.790 and in appropriations provided by the legislature for implementation of the plan. [2009 c 235 § 3; 1999 c 267 § 7; 1979 c 155 § 76; 1977 ex.s. c 291 § 21; 1975-'76 2nd ex.s. c 71 § 3; 1971 ex.s. c 292 § 66; 1965 c 30 § 3.]

Findings—Intent—2009 c 235: See note following RCW 74.13.031.

74.13.020 Definitions *(as amended by 2009 c 520).* ((~~As used in Title 74 RCW, child welfare services shall be defined as public social services including adoption services which strengthen, supplement, or substitute for, parental care and supervision for the purpose of:~~

~~(1) Preventing or remedying, or assisting in the solution of problems which may result in families in conflict, or the neglect, abuse, exploitation, or criminal behavior of children;~~

~~(2) Protecting and caring for dependent or neglected children;~~

~~(3) Assisting children who are in conflict with their parents, and assisting parents who are in conflict with their children with services designed to resolve such conflicts;~~

~~(4) Protecting and promoting the welfare of children, including the strengthening of their own homes where possible, or, where needed;~~

~~(5) Providing adequate care of children away from their homes in foster family homes or day care or other child care agencies or facilities.~~

~~As used in this chapter, child means a person less than eighteen years of age.~~

~~The department's duty to provide services to homeless families with children is set forth in RCW 43.20A.790 and in appropriations provided by the legislature for implementation of the plan.~~))

For purposes of this chapter:

(1) "Case management" means the management of services delivered to children and families in the child welfare system, including permanency services, caseworker-child visits, family visits, the convening of family group conferences, the development and revision of the case plan, the coordination and monitoring of services needed by the child and family, and the assumption of court-related duties, excluding legal representation, including preparing court reports, attending judicial hearings and permanency hearings, and ensuring that the child is progressing toward permanency within state and federal mandates, including the Indian child welfare act.

(2) "Child" means a person less than eighteen years of age.

(3) "Child protective services" has the same meaning as in RCW 26.44.020.

(4) "Child welfare services" means social services including voluntary and in-home services, out-of-home care, case management, and adoption services which strengthen, supplement, or substitute for, parental care and supervision for the purpose of:

(a) Preventing or remedying, or assisting in the solution of problems which may result in families in conflict, or the neglect, abuse, exploitation, or criminal behavior of children;

(b) Protecting and caring for dependent, abused, or neglected children;

(c) Assisting children who are in conflict with their parents, and assisting parents who are in conflict with their children, with services designed to resolve such conflicts;

(d) Protecting and promoting the welfare of children, including the strengthening of their own homes where possible, or, where needed;

(e) Providing adequate care of children away from their homes in foster family homes or day care or other child care agencies or facilities.

"Child welfare services" does not include child protection services.

(5) "Committee" means the child welfare transformation design committee.

(6) "Department" means the department of social and health services.

(7) "Measurable effects" means a statistically significant change which occurs as a result of the service or services a supervising agency is assigned in a performance-based contract, in time periods established in the contract.

(8) "Out-of-home care services" means services provided after the shelter care hearing to or for children in out-of-home care, as that term is defined in RCW 13.34.030, and their families, including the recruitment, training, and management of foster parents, the recruitment of adoptive families, and the facilitation of the adoption process, family reunification, independent living, emergency shelter, residential group care, and foster care, including relative placement.

(9) "Performance-based contracting" means the structuring of all aspects of the procurement of services around the purpose of the work to be performed and the desired results with the contract requirements set forth in clear, specific, and objective terms with measurable outcomes. Contracts shall also include provisions that link the performance of the contractor to the level and timing of reimbursement.

(10) "Permanency services" means long-term services provided to secure a child's safety, permanency, and well-being, including foster care services, family reunification services, adoption services, and preparation for independent living services.

(11) "Primary prevention services" means services which are designed and delivered for the primary purpose of enhancing child and family well-being and are shown, by analysis of outcomes, to reduce the risk to the likelihood of the initial need for child welfare services.

(12) "Supervising agency" means an agency licensed by the state under RCW 74.15.090, or an Indian tribe under RCW 74.15.190, that has entered into a performance-based contract with the department to provide child welfare services. [2009 c 520 § 2; 1999 c 267 § 7; 1979 c 155 § 76; 1977 ex.s. c 291 § 21; 1975-'76 2nd ex.s. c 71 § 3; 1971 ex.s. c 292 § 66; 1965 c 30 § 3.]

Reviser's note: RCW 74.13.020 was amended twice during the 2009 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

Findings—Intent—Severability—1999 c 267: See notes following RCW 43.20A.790.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

Severability—1971 ex.s. c 292: See note following RCW 26.28.010.

74.13.029 Dependency established—Social worker's duty to provide document containing information. Once a dependency is established under chapter 13.34 RCW, the social worker assigned to the case shall provide the dependent child age twelve years and older with a document containing the information described in RCW 74.13.031(16). The social worker shall explain the contents of the document to the child and direct the child to the department's web site for further information. The social worker shall document, in the electronic data system, that this requirement was met. [2009 c 491 § 8.]

74.13.031 Duties of department—Child welfare services—Children's services advisory committee *(as amended by 2009 c 235). (Effective until October 1, 2010.)* The department shall have the duty to provide child welfare services and shall:

(1) Develop, administer, supervise, and monitor a coordinated and comprehensive plan that establishes, aids, and strengthens services for the protection and care of runaway, dependent, or neglected children.

(2) Within available resources, recruit an adequate number of prospective adoptive and foster homes, both regular and specialized, i.e. homes for children of ethnic minority, including Indian homes for Indian children, sibling groups, handicapped and emotionally disturbed, teens, pregnant and parenting teens, and annually report to the governor and the legislature concerning the department's success in: (a) Meeting the need for adoptive and foster home placements; (b) reducing the foster parent turnover rate; (c) completing home studies for legally free children; and (d) implementing and operating the passport program required by RCW 74.13.285. The report shall include a section entitled "Foster Home Turn-Over, Causes and Recommendations."

(3) Investigate complaints of any recent act or failure to act on the part of a parent or caretaker that results in death, serious physical or emotional harm, or sexual abuse or exploitation, or that presents an imminent risk of serious harm, and on the basis of the findings of such investigation, offer child welfare services in relation to the problem to such parents, legal custodians, or persons serving in loco parentis, and/or bring the situation to the attention of an appropriate court, or another community agency. An investigation is not required of nonaccidental injuries which are clearly not the result of a lack of care or supervision by the child's parents, legal custodians, or persons serving in loco parentis. If the investigation reveals that a crime against a child may have been committed, the department shall notify the appropriate law enforcement agency.

(4) Offer, on a voluntary basis, family reconciliation services to families who are in conflict.

(5) Monitor placements of children in out-of-home care and in-home dependencies to assure the safety, well-being, and quality of care being provided is within the scope of the intent of the legislature as defined in RCW 74.13.010 and 74.15.010. The policy for monitoring placements under this section shall require that children in out-of-home care and in-home dependencies and their caregivers receive a private and individual face-to-face visit each month.

(a) The department shall conduct the monthly visits with children and caregivers required under this section unless the child's placement is being supervised under a contract between the department and a private agency

accredited by a national child welfare accrediting entity, in which case the private agency shall, within existing resources, conduct the monthly visits with the child and with the child's caregiver according to the standards described in this subsection and shall provide the department with a written report of the visits within fifteen days of completing the visits.

(b) In cases where the monthly visits required under this subsection are being conducted by a private agency, the department shall conduct a face-to-face health and safety visit with the child at least once every ninety days.

(6) Have authority to accept custody of children from parents and to accept custody of children from juvenile courts, where authorized to do so under law, to provide child welfare services including placement for adoption, to provide for the routine and necessary medical, dental, and mental health care, or necessary emergency care of the children, and to provide for the physical care of such children and make payment of maintenance costs if needed. Except where required by Public Law 95-608 (25 U.S.C. Sec. 1915), no private adoption agency which receives children for adoption from the department shall discriminate on the basis of race, creed, or color when considering applications in their placement for adoption.

(7) Have authority to provide temporary shelter to children who have run away from home and who are admitted to crisis residential centers.

(8) Have authority to purchase care for children; and shall follow in general the policy of using properly approved private agency services for the actual care and supervision of such children insofar as they are available, paying for care of such children as are accepted by the department as eligible for support at reasonable rates established by the department.

(9) Establish a children's services advisory committee which shall assist the secretary in the development of a partnership plan for utilizing resources of the public and private sectors, and advise on all matters pertaining to child welfare, licensing of child care agencies, adoption, and services related thereto. At least one member shall represent the adoption community.

(10)(((~~(a)~~))) Have authority to provide continued foster care or group care as needed to participate in or complete a high school or vocational school program.

(((~~(b)(i) Beginning in 2006, the department has the authority to allow up to fifty youth reaching age eighteen to continue in foster care or group care as needed to participate in or complete a posthigh school academic or vocational program, and to receive necessary support and transition services.~~

~~(ii) In 2007 and 2008, the department has the authority to allow up to fifty additional youth per year reaching age eighteen to remain in foster care or group care as provided in (b)(i) of this subsection.~~

~~(iii)~~))) (11) Within amounts appropriated for this specific purpose, have authority to provide continued foster care or group care and necessary support and transition services to youth ages eighteen to twenty-one years who are enrolled and participating in a posthigh school academic or vocational program. A youth who remains eligible for such placement and services pursuant to department rules may continue in foster care or group care until the youth reaches his or her twenty-first birthday. ((~~Eligibility requirements shall include active enrollment in a posthigh school academic or vocational program and maintenance of a 2.0 grade point average.~~

~~(11)~~))) (12) Refer cases to the division of child support whenever state or federal funds are expended for the care and maintenance of a child, including a child with a developmental disability who is placed as a result of an action under chapter 13.34 RCW, unless the department finds that there is good cause not to pursue collection of child support against the parent or parents of the child. Cases involving individuals age eighteen through twenty shall not be referred to the division of child support unless required by federal law.

(((~~(12)~~))) (13) Have authority within funds appropriated for foster care services to purchase care for Indian children who are in the custody of a federally recognized Indian tribe or tribally licensed child-placing agency pursuant to parental consent, tribal court order, or state juvenile court order; and the purchase of such care shall be subject to the same eligibility standards and rates of support applicable to other children for whom the department purchases care.

Notwithstanding any other provision of RCW 13.32A.170 through 13.32A.200 and 74.13.032 through 74.13.036, or of this section all services to be provided by the department of social and health services under subsections (4), (6), and (7) of this section, subject to the limitations of these subsections, may be provided by any program offering such services funded pursuant to Titles II and III of the federal juvenile justice and delinquency prevention act of 1974.

(((~~(13)~~))) (14) Within amounts appropriated for this specific purpose, provide preventive services to families with children that prevent or shorten the duration of an out-of-home placement.

(((~~(14)~~))) (15) Have authority to provide independent living services to youths, including individuals who have attained eighteen years of age, and have not attained twenty-one years of age who are or have been in foster care.

(((~~(15)~~))) (16) Consult at least quarterly with foster parents, including members of the foster parent association of Washington state, for the purpose of receiving information and comment regarding how the department is performing the duties and meeting the obligations specified in this section and RCW 74.13.250 and 74.13.320 regarding the recruitment of foster homes, reducing foster parent turnover rates, providing effective training for foster parents, and administering a coordinated and comprehensive plan that strengthens services for the protection of children. Consultation shall occur at the regional and statewide levels. [2009 c 235 § 4; 2008 c 267 § 6; 2007 c 413 § 10. Prior: 2006 c 266 § 1; 2006 c 221 § 3; 2004 c 183 § 3; 2001 c 192 § 1; 1999 c 267 § 8; 1998 c 314 § 10; prior: 1997 c 386 § 32; 1997 c 272 § 1; 1995 c 191 § 1; 1990 c 146 § 9; prior: 1987 c 505 § 69; 1987 c 170 § 10; 1983 c 246 § 4; 1982 c 118 § 3; 1981 c 298 § 16; 1979 ex.s. c 165 § 22; 1979 c 155 § 77; 1977 ex.s. c 291 § 22; 1975-'76 2nd ex.s. c 71 § 4; 1973 1st ex.s. c 101 § 2; 1967 c 172 § 17.]

Expiration date—2009 c 235 § 4: "Section 4 of this act expires October 1, 2010." [2009 c 235 § 8.]

Findings—Intent—2009 c 235: "(1) The legislature finds that the federal fostering connections to success and increasing adoptions act of 2008 provides important new opportunities for the state to use federal funding to promote permanency and positive outcomes for youth in foster care and for those who age out of the foster care system.

(2) The legislature also finds that research regarding former foster youth is generally sobering. Longitudinal research on the adult functioning of former foster youth indicates a disproportionate likelihood that youth aging out of foster care and those who spent several years in care will experience poor outcomes in a variety of areas, including limited human capital upon which to build economic security; untreated mental or behavioral health problems; involvement in the criminal justice and corrections systems; and early parenthood combined with second-generation child welfare involvement. The legislature further finds that research also demonstrates that access to adequate and appropriate supports during the period of transition from foster care to independence can have significant positive impacts on adult functioning and can improve outcomes relating to educational attainment and postsecondary enrollment; employment and earnings; and reduced rates of teen pregnancies.

(3) The legislature intends to clarify existing authority for foster care services beyond age eighteen and to establish authority for future expansion of housing and other supports for youth aging out of foster care and youth who achieved permanency in later adolescence." [2009 c 235 § 1.]

74.13.031 Duties of department—Child welfare services—Children's services advisory committee ***(as amended by 2009 c 235). (Effective October 1, 2010.)*** The department shall have the duty to provide child welfare services and shall:

(1) Develop, administer, supervise, and monitor a coordinated and comprehensive plan that establishes, aids, and strengthens services for the protection and care of runaway, dependent, or neglected children.

(2) Within available resources, recruit an adequate number of prospective adoptive and foster homes, both regular and specialized, i.e. homes for children of ethnic minority, including Indian homes for Indian children, sibling groups, handicapped and emotionally disturbed, teens, pregnant and parenting teens, and annually report to the governor and the legislature concerning the department's success in: (a) Meeting the need for adoptive and foster home placements; (b) reducing the foster parent turnover rate; (c) completing home studies for legally free children; and (d) implementing and operating the passport program required by RCW 74.13.285. The report shall include a section entitled "Foster Home Turn-Over, Causes and Recommendations."

(3) Investigate complaints of any recent act or failure to act on the part of a parent or caretaker that results in death, serious physical or emotional harm, or sexual abuse or exploitation, or that presents an imminent risk of serious harm, and on the basis of the findings of such investigation, offer child welfare services in relation to the problem to such parents, legal custodians, or persons serving in loco parentis, and/or bring the situation to the attention of an appropriate court, or another community agency. An investigation is not required of nonaccidental injuries which are clearly not the result of a lack of care or supervision by the child's parents, legal custodians, or persons serving in loco parentis. If the investigation reveals that a crime against a child may have been committed, the department shall notify the appropriate law enforcement agency.

(4) Offer, on a voluntary basis, family reconciliation services to families who are in conflict.

(5) Monitor placements of children in out-of-home care and in-home dependencies to assure the safety, well-being, and quality of care being provided is within the scope of the intent of the legislature as defined in RCW 74.13.010 and 74.15.010. The policy for monitoring placements under this section shall require that children in out-of-home care and in-home dependencies and their caregivers receive a private and individual face-to-face visit each month.

(a) The department shall conduct the monthly visits with children and caregivers required under this section unless the child's placement is being supervised under a contract between the department and a private agency accredited by a national child welfare accrediting entity, in which case the private agency shall, within existing resources, conduct the monthly visits with the child and with the child's caregiver according to the standards described in this subsection and shall provide the department with a written report of the visits within fifteen days of completing the visits.

(b) In cases where the monthly visits required under this subsection are being conducted by a private agency, the department shall conduct a face-to-face health and safety visit with the child at least once every ninety days.

(6) Have authority to accept custody of children from parents and to accept custody of children from juvenile courts, where authorized to do so under law, to provide child welfare services including placement for adoption, to provide for the routine and necessary medical, dental, and mental health care, or necessary emergency care of the children, and to provide for the physical care of such children and make payment of maintenance costs if needed. Except where required by Public Law 95-608 (25 U.S.C. Sec. 1915), no private adoption agency which receives children for adoption from the department shall discriminate on the basis of race, creed, or color when considering applications in their placement for adoption.

(7) Have authority to provide temporary shelter to children who have run away from home and who are admitted to crisis residential centers.

(8) Have authority to purchase care for children; and shall follow in general the policy of using properly approved private agency services for the actual care and supervision of such children insofar as they are available, paying for care of such children as are accepted by the department as eligible for support at reasonable rates established by the department.

(9) Establish a children's services advisory committee which shall assist the secretary in the development of a partnership plan for utilizing resources of the public and private sectors, and advise on all matters pertaining to child welfare, licensing of child care agencies, adoption, and services related thereto. At least one member shall represent the adoption community.

(10)(((~~(a)~~))) Have authority to provide continued foster care or group care as needed to participate in or complete a high school or vocational school program.

(((~~(b)(i) Beginning in 2006, the department has the authority to allow up to fifty youth reaching age eighteen to continue in foster care or group care as needed to participate in or complete a posthigh school academic or vocational program, and to receive necessary support and transition services.~~

~~(ii) In 2007 and 2008, the department has the authority to allow up to fifty additional youth per year reaching age eighteen to remain in foster care or group care as provided in (b)(i) of this subsection.~~

~~(iii) A youth who remains eligible for such placement and services pursuant to department rules may continue in foster care or group care until the youth reaches his or her twenty-first birthday. Eligibility requirements shall include active enrollment in a posthigh school academic or vocational program and maintenance of a 2.0 grade point average.~~))

(11)(a) Within amounts appropriated for this specific purpose, have authority to provide continued foster care or group care to youth ages eighteen to twenty-one years who are:

(i) Enrolled and participating in a postsecondary or vocational educational program;

(ii) Participating in a program or activity designed to promote or remove barriers to employment;

(iii) Engaged in employment for eighty hours or more per month; or

(iv) Incapable of engaging on any of the activities described in (a)(i) through (iii) of this subsection due to a medical condition that is supported by regularly updated information.

(b) A youth who remains eligible for placement services or benefits pursuant to department rules may continue to receive placement services and benefits until the youth reaches his or her twenty-first birthday.

(12) Within amounts appropriated for this specific purpose, have authority to provide adoption support benefits, or subsidized relative guardianship benefits on behalf of youth ages eighteen to twenty-one years who achieved permanency through adoption or a subsidized relative guardianship at age sixteen or older and who are engaged in one of the activities described in subsection (11) of this section.

(13) Refer cases to the division of child support whenever state or federal funds are expended for the care and maintenance of a child, including a child with a developmental disability who is placed as a result of an action under chapter 13.34 RCW, unless the department finds that there is good cause not to pursue collection of child support against the parent or parents of the child. Cases involving individuals age eighteen through twenty shall not be referred to the division of child support unless required by federal law.

(((~~(12)~~))) (14) Have authority within funds appropriated for foster care services to purchase care for Indian children who are in the custody of a federally recognized Indian tribe or tribally licensed child-placing agency pursuant to parental consent, tribal court order, or state juvenile court order; and the purchase of such care shall be subject to the same eligibility standards and rates of support applicable to other children for whom the department purchases care.

Notwithstanding any other provision of RCW 13.32A.170 through 13.32A.200 and 74.13.032 through 74.13.036, or of this section all services to be provided by the department of social and health services under subsections (4), (6), and (7) of this section, subject to the limitations of these subsections, may be provided by any program offering such services funded pursuant to Titles II and III of the federal juvenile justice and delinquency prevention act of 1974.

(((~~(13)~~))) (15) Within amounts appropriated for this specific purpose, provide preventive services to families with children that prevent or shorten the duration of an out-of-home placement.

(((~~(14)~~))) (16) Have authority to provide independent living services to youths, including individuals who have attained eighteen years of age, and have not attained twenty-one years of age who are or have been in foster care.

(((~~(15)~~))) (17) Consult at least quarterly with foster parents, including members of the foster parent association of Washington state, for the purpose of receiving information and comment regarding how the department is performing the duties and meeting the obligations specified in this section and RCW 74.13.250 and 74.13.320 regarding the recruitment of foster homes, reducing foster parent turnover rates, providing effective training for foster parents, and administering a coordinated and comprehensive plan that strengthens services for the protection of children. Consultation shall occur at the regional and statewide levels. [2009 c 235 § 2; 2008 c 267 § 6; 2007 c 413 § 10. Prior: 2006 c 266 § 1; 2006 c 221 § 3; 2004 c 183 § 3; 2001 c 192 § 1; 1999 c 267 § 8; 1998 c 314 § 10; prior: 1997 c 386 § 32; 1997 c 272 § 1; 1995 c 191 § 1; 1990 c 146 § 9; prior: 1987 c 505 § 69; 1987 c 170 § 10; 1983 c 246 § 4; 1982 c 118 § 3; 1981 c 298 § 16; 1979 ex.s. c 165 § 22; 1979 c 155 § 77; 1977 ex.s. c 291 § 22; 1975-'76 2nd ex.s. c 71 § 4; 1973 1st ex.s. c 101 § 2; 1967 c 172 § 17.]

Effective date—2009 c 235 § 2: "Section 2 of this act takes effect October 1, 2010." [2009 c 235 § 7.]

74.13.031 Duties of department—Child welfare services—Children's services advisory committee *(as amended by 2009 c 491)*. The department shall have the duty to provide child welfare services and shall:

(1) Develop, administer, supervise, and monitor a coordinated and comprehensive plan that establishes, aids, and strengthens services for the protection and care of runaway, dependent, or neglected children.

(2) Within available resources, recruit an adequate number of prospective adoptive and foster homes, both regular and specialized, i.e. homes for children of ethnic minority, including Indian homes for Indian children, sibling groups, handicapped and emotionally disturbed, teens, pregnant and parenting teens, and annually report to the governor and the legislature concerning the department's success in: (a) Meeting the need for adoptive and foster home placements; (b) reducing the foster parent turnover rate; (c) completing home studies for legally free children; and (d) implementing and operating the passport program required by RCW 74.13.285. The report shall include a section entitled "Foster Home Turn-Over, Causes and Recommendations."

(3) Investigate complaints of any recent act or failure to act on the part of a parent or caretaker that results in death, serious physical or emotional harm, or sexual abuse or exploitation, or that presents an imminent risk of serious harm, and on the basis of the findings of such investigation, offer child welfare services in relation to the problem to such parents, legal custodians, or persons serving in loco parentis, and/or bring the situation to the attention of an appropriate court, or another community agency. An investigation is not required of nonaccidental injuries which are clearly not the result of a lack of care or supervision by the child's parents, legal custodians, or persons serving in loco parentis. If the investigation reveals that a crime

against a child may have been committed, the department shall notify the appropriate law enforcement agency.

(4) Offer, on a voluntary basis, family reconciliation services to families who are in conflict.

(5) Monitor placements of children in out-of-home care and in-home dependencies to assure the safety, well-being, and quality of care being provided is within the scope of the intent of the legislature as defined in RCW 74.13.010 and 74.15.010. The policy for monitoring placements under this section shall require that children in out-of-home care and in-home dependencies and their caregivers receive a private and individual face-to-face visit each month.

(a) The department shall conduct the monthly visits with children and caregivers required under this section unless the child's placement is being supervised under a contract between the department and a private agency accredited by a national child welfare accrediting entity, in which case the private agency shall, within existing resources, conduct the monthly visits with the child and with the child's caregiver according to the standards described in this subsection and shall provide the department with a written report of the visits within fifteen days of completing the visits.

(b) In cases where the monthly visits required under this subsection are being conducted by a private agency, the department shall conduct a face-to-face health and safety visit with the child at least once every ninety days.

(6) Have authority to accept custody of children from parents and to accept custody of children from juvenile courts, where authorized to do so under law, to provide child welfare services including placement for adoption, to provide for the routine and necessary medical, dental, and mental health care, or necessary emergency care of the children, and to provide for the physical care of such children and make payment of maintenance costs if needed. Except where required by Public Law 95-608 (25 U.S.C. Sec. 1915), no private adoption agency which receives children for adoption from the department shall discriminate on the basis of race, creed, or color when considering applications in their placement for adoption.

(7) Have authority to provide temporary shelter to children who have run away from home and who are admitted to crisis residential centers.

(8) Have authority to purchase care for children; and shall follow in general the policy of using properly approved private agency services for the actual care and supervision of such children insofar as they are available, paying for care of such children as are accepted by the department as eligible for support at reasonable rates established by the department.

(9) Establish a children's services advisory committee which shall assist the secretary in the development of a partnership plan for utilizing resources of the public and private sectors, and advise on all matters pertaining to child welfare, licensing of child care agencies, adoption, and services related thereto. At least one member shall represent the adoption community.

(10)(a) Have authority to provide continued foster care or group care as needed to participate in or complete a high school or vocational school program.

(b)(i) Beginning in 2006, the department has the authority to allow up to fifty youth reaching age eighteen to continue in foster care or group care as needed to participate in or complete a posthigh school academic or vocational program, and to receive necessary support and transition services.

(ii) In 2007 and 2008, the department has the authority to allow up to fifty additional youth per year reaching age eighteen to remain in foster care or group care as provided in (b)(i) of this subsection.

(iii) A youth who remains eligible for such placement and services pursuant to department rules may continue in foster care or group care until the youth reaches his or her twenty-first birthday. Eligibility requirements shall include active enrollment in a posthigh school academic or vocational program and maintenance of a 2.0 grade point average.

(11) Refer cases to the division of child support whenever state or federal funds are expended for the care and maintenance of a child, including a child with a developmental disability who is placed as a result of an action under chapter 13.34 RCW, unless the department finds that there is good cause not to pursue collection of child support against the parent or parents of the child. Cases involving individuals age eighteen through twenty shall not be referred to the division of child support unless required by federal law.

(12) Have authority within funds appropriated for foster care services to purchase care for Indian children who are in the custody of a federally recognized Indian tribe or tribally licensed child-placing agency pursuant to parental consent, tribal court order, or state juvenile court order; and the purchase of such care shall be subject to the same eligibility standards and rates of support applicable to other children for whom the department purchases care.

Notwithstanding any other provision of RCW 13.32A.170 through 13.32A.200 and 74.13.032 through 74.13.036, or of this section all services to be provided by the department of social and health services under subsections (4), (6), and (7) of this section, subject to the limitations of these subsections, may be provided by any program offering such services funded pursuant to Titles II and III of the federal juvenile justice and delinquency prevention act of 1974.

(13) Within amounts appropriated for this specific purpose, provide preventive services to families with children that prevent or shorten the duration of an out-of-home placement.

(14) Have authority to provide independent living services to youths, including individuals who have attained eighteen years of age, and have not attained twenty-one years of age who are or have been in foster care.

(15) Consult at least quarterly with foster parents, including members of the foster parent association of Washington state, for the purpose of receiving information and comment regarding how the department is performing the duties and meeting the obligations specified in this section and RCW 74.13.250 and 74.13.320 regarding the recruitment of foster homes, reducing foster parent turnover rates, providing effective training for foster parents, and administering a coordinated and comprehensive plan that strengthens services for the protection of children. Consultation shall occur at the regional and statewide levels.

(16)(a) Within current funding levels, place on the public web site maintained by the department a document listing the duties and responsibilities the department has to a child subject to a dependency petition including, but not limited to, the following:

(i) Reasonable efforts, including the provision of services, toward reunification of the child with his or her family;

(ii) Sibling visits subject to the restrictions in RCW 13.34.136(2)(b)(ii);

(iii) Parent-child visits;

(iv) Statutory preference for placement with a relative or other suitable person, if appropriate; and

(v) Statutory preference for an out-of-home placement that allows the child to remain in the same school or school district, if practical and in the child's best interests.

(b) The document must be prepared in conjunction with a community-based organization and must be updated as needed. [2009 c 491 § 7; 2008 c 267 § 6; 2007 c 413 § 10. Prior: 2006 c 266 § 1; 2006 c 221 § 3; 2004 c 183 § 3; 2001 c 192 § 1; 1999 c 267 § 8; 1998 c 314 § 10; prior: 1997 c 386 § 32; 1997 c 272 § 1; 1995 c 191 § 1; 1990 c 146 § 9; prior: 1987 c 505 § 69; 1987 c 170 § 10; 1983 c 246 § 4; 1982 c 118 § 3; 1981 c 298 § 16; 1979 ex.s. c 165 § 22; 1979 c 155 § 77; 1977 ex.s. c 291 § 22; 1975-'76 2nd ex.s. c 71 § 4; 1973 1st ex.s. c 101 § 2; 1967 c 172 § 17.]

74.13.031 Duties of department and supervising agencies—Child welfare services—Children's services advisory committee *(as amended by 2009 c 520).* ((~~The department shall have the duty to provide child welfare services and shall:~~))

(1) The department and supervising agencies shall develop, administer, supervise, and monitor a coordinated and comprehensive plan that establishes, aids, and strengthens services for the protection and care of runaway, dependent, or neglected children.

(2) Within available resources, the department and supervising agencies shall recruit an adequate number of prospective adoptive and foster homes, both regular and specialized, i.e. homes for children of ethnic minority, including Indian homes for Indian children, sibling groups, handicapped and emotionally disturbed, teens, pregnant and parenting teens, and the department shall annually report to the governor and the legislature concerning the department's and supervising agency's success in: (a) Meeting the need for adoptive and foster home placements; (b) reducing the foster parent turnover rate; (c) completing home studies for legally free children; and (d) implementing and operating the passport program required by RCW 74.13.285. The report shall include a section entitled "Foster Home Turn-Over, Causes and Recommendations."

(3) The department shall investigate complaints of any recent act or failure to act on the part of a parent or caretaker that results in death, serious physical or emotional harm, or sexual abuse or exploitation, or that presents an imminent risk of serious harm, and on the basis of the findings of such investigation, offer child welfare services in relation to the problem to such parents, legal custodians, or persons serving in loco parentis, and/or bring the situation to the attention of an appropriate court, or another community agency. An investigation is not required of nonaccidental injuries which are clearly not the result of a lack of care or supervision by the child's parents, legal custodians, or persons serving in loco parentis. If the investigation reveals that a crime against a child may have been committed, the department shall notify the appropriate law enforcement agency.

(4) The department or supervising agencies shall offer, on a voluntary basis, family reconciliation services to families who are in conflict.

(5) The department or supervising agencies shall monitor placements of children in out-of-home care and in-home dependencies to assure the safety, well-being, and quality of care being provided is within the scope of the intent of the legislature as defined in RCW 74.13.010 and 74.15.010. ((The policy for monitoring placements)) Under this section ((shall require that)) children in out-of-home care and in-home dependencies and their caregivers shall receive a private and individual face-to-face visit each month.

(((a))) The department or supervising agencies shall conduct the monthly visits with children and caregivers ((required under this section unless the child's placement is being supervised under a contract between the department and a private agency accredited by a national child welfare accrediting entity, in which case the private agency shall, within existing resources, conduct the monthly visits with the child and with the child's caregiver according to the standards described in this subsection and shall provide the department with a written report of the visits within fifteen days of completing the visits.

(b) n cases where the monthly visits required under this subsection are being conducted by a private agency, the department shall conduct a face-to-face health and safety visit with the child at least once every ninety days)) to whom it is providing child welfare services.

(6) The department and supervising agencies shall have authority to accept custody of children from parents and to accept custody of children from juvenile courts, where authorized to do so under law, to provide child welfare services including placement for adoption, to provide for the routine and necessary medical, dental, and mental health care, or necessary emergency care of the children, and to provide for the physical care of such children and make payment of maintenance costs if needed. Except where required by Public Law 95-608 (25 U.S.C. Sec. 1915), no private adoption agency which receives children for adoption from the department shall discriminate on the basis of race, creed, or color when considering applications in their placement for adoption.

(7) The department and supervising agency shall have authority to provide temporary shelter to children who have run away from home and who are admitted to crisis residential centers.

(8) The department and supervising agency shall have authority to purchase care for children((; and shall follow in general the policy of using properly approved private agency services for the actual care and supervision of such children insofar as they are available, paying for care of such children as are accepted by the department as eligible for support at reasonable rates established by the department)).

(9) The department shall establish a children's services advisory committee with sufficient members representing supervising agencies which shall assist the secretary in the development of a partnership plan for utilizing resources of the public and private sectors, and advise on all matters pertaining to child welfare, licensing of child care agencies, adoption, and services related thereto. At least one member shall represent the adoption community.

(10)(a) The department and supervising agencies shall have authority to provide continued foster care or group care as needed to participate in or complete a high school or vocational school program.

(b)(i) Beginning in 2006, the department has the authority to allow up to fifty youth reaching age eighteen to continue in foster care or group care as needed to participate in or complete a posthigh school academic or vocational program, and to receive necessary support and transition services.

(ii) In 2007 and 2008, the department has the authority to allow up to fifty additional youth per year reaching age eighteen to remain in foster care or group care as provided in (b)(i) of this subsection.

(iii) A youth who remains eligible for such placement and services pursuant to department rules may continue in foster care or group care until the youth reaches his or her twenty-first birthday. Eligibility requirements shall include active enrollment in a posthigh school academic or vocational program and maintenance of a 2.0 grade point average.

(11) The department shall refer cases to the division of child support whenever state or federal funds are expended for the care and maintenance of a child, including a child with a developmental disability who is placed as a result of an action under chapter 13.34 RCW, unless the department finds that there is good cause not to pursue collection of child support against the parent or parents of the child. Cases involving individuals age eighteen through twenty shall not be referred to the division of child support unless required by federal law.

(12) The department and supervising agencies shall have authority within funds appropriated for foster care services to purchase care for Indian children who are in the custody of a federally recognized Indian tribe or tribally licensed child-placing agency pursuant to parental consent, tribal court order, or state juvenile court order; and the purchase of such care shall be subject to the same eligibility standards and rates of support applicable to other children for whom the department purchases care.

Notwithstanding any other provision of RCW 13.32A.170 through 13.32A.200 and 74.13.032 through 74.13.036, or of this section all services to be provided by the department ((of social and health services)) under subsections (4), (6), and (7) of this section, subject to the limitations of these subsections, may be provided by any program offering such services funded pursuant to Titles II and III of the federal juvenile justice and delinquency prevention act of 1974.

(13) Within amounts appropriated for this specific purpose, the supervising agency or department shall provide preventive services to families with children that prevent or shorten the duration of an out-of-home placement.

(14) The department and supervising agencies shall have authority to provide independent living services to youths, including individuals who have attained eighteen years of age, and have not attained twenty-one years of age who are or have been in foster care.

(15) The department and supervising agencies shall consult at least quarterly with foster parents, including members of the foster parent association of Washington state, for the purpose of receiving information and comment regarding how the department ((is)) and supervising agencies are performing the duties and meeting the obligations specified in this section and RCW 74.13.250 and 74.13.320 regarding the recruitment of foster homes, reducing foster parent turnover rates, providing effective training for foster parents, and administering a coordinated and comprehensive plan that strengthens services for the protection of children. Consultation shall occur at the regional and statewide levels. [2009 c 520 § 51; 2008 c 267 § 6; 2007 c 413 § 10. Prior: 2006 c 266 § 1; 2006 c 221 § 3; 2004 c 183 § 3; 2001 c 192 § 1; 1999 c 267 § 8; 1998 c 314 § 10; prior: 1997 c 386 § 32; 1997 c 272 § 1; 1995 c 191 § 1; 1990 c 146 § 9; prior: 1987 c 505 § 69; 1987 c 170 § 10; 1983 c 246 § 4; 1982 c 118 § 3; 1981 c 298 § 16; 1979 ex.s. c 165 § 22; 1979 c 155 § 77; 1977 ex.s. c 291 § 22; 1975-'76 2nd ex.s. c 71 § 4; 1973 1st ex.s. c 101 § 2; 1967 c 172 § 17.]

Reviser's note: RCW 74.13.031 was amended four times during the 2009 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

Effective date—2008 c 267 § 6: "Section 6 of this act takes effect December 31, 2008." [2008 c 267 § 14.]

Severability—2007 c 413: See note following RCW 13.34.215.

Construction—2006 c 266: "Nothing in this act shall be construed to create:

(1) An entitlement to services;

(2) Judicial authority to extend the jurisdiction of juvenile court in a proceeding under chapter 13.34 RCW to a youth who has attained eighteen years of age or to order the provision of services to the youth; or

(3) A private right of action or claim on the part of any individual, entity, or agency against the department of social and health services or any contractor of the department." [2006 c 266 § 2.]

Adoption of rules—2006 c 266: "The department of social and health services is authorized to adopt rules establishing eligibility for independent living services and placement for youths under this act." [2006 c 266 § 3.]

Study and report—2006 c 266: "(1) Beginning in July 2008 and subject to the approval of its governing board, the Washington state institute for public policy shall conduct a study measuring the outcomes for foster youth who have received continued support pursuant to RCW 74.13.031(10). The study should include measurements of any savings to the state and local government. The institute shall issue a report containing its preliminary findings to the legislature by December 1, 2008, and a final report by December 1, 2009.

(2) The institute is authorized to accept nonstate funds to conduct the study required in subsection (1) of this section." [2006 c 266 § 4.]

Finding—2006 c 221: See note following RCW 13.34.315.

Effective date—2004 c 183: See note following RCW 13.34.160.

Findings—Intent—Severability—1999 c 267: See notes following RCW 43.20A.790.

Application—Effective date—1997 c 386: See notes following RCW 13.50.010.

Effective date—1997 c 272: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state gov-

ernment and its existing public institutions, and takes effect July 1, 1997." [1997 c 272 § 8.]

Effective date—1987 c 170 §§ 10 and 11: "Sections 10 and 11 of this act shall take effect July 1, 1988." [1987 c 170 § 16.]

Severability—1987 c 170: See note following RCW 13.04.030.

Severability—1981 c 298: See note following RCW 13.32A.040.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

Severability—1967 c 172: See note following RCW 74.15.010.

Declaration of purpose—1967 c 172: See RCW 74.15.010.

Abuse of child: Chapter 26.44 RCW.

Licensing of agencies caring for or placing children, expectant mothers, and individuals with developmental disabilities: Chapter 74.15 RCW.

74.13.0311 Services provided under deferred prosecution order. The department or supervising agencies may provide child welfare services pursuant to a deferred prosecution plan ordered under chapter 10.05 RCW. Child welfare services provided under this chapter pursuant to a deferred prosecution order may not be construed to prohibit the department or supervising agencies from providing services or undertaking proceedings pursuant to chapter 13.34 or 26.44 RCW. [2009 c 520 § 52; 2002 c 219 § 13.]

Intent—Finding—2002 c 219: See note following RCW 9A.42.037.

74.13.032 Crisis residential centers—Establishment—Staff—Duties—Semi-secure facilities—Secure facilities. (1) The department shall establish, through performance-based contracts with private or public vendors, regional crisis residential centers with semi-secure facilities. These facilities shall be structured group care facilities licensed under rules adopted by the department and shall have an average of at least four adult staff members and in no event less than three adult staff members to every eight children.

(2) Within available funds appropriated for this purpose, the department shall establish, through performance-based contracts with private or public vendors, regional crisis residential centers with secure facilities. These facilities shall be facilities licensed under rules adopted by the department. These centers may also include semi-secure facilities and to such extent shall be subject to subsection (1) of this section.

(3) The department shall, in addition to the facilities established under subsections (1) and (2) of this section, establish additional crisis residential centers pursuant to performance-based contracts with licensed private group care facilities.

(4) The staff at the facilities established under this section shall be trained so that they may effectively counsel juveniles admitted to the centers, provide treatment, supervision, and structure to the juveniles that recognize the need for support and the varying circumstances that cause children to leave their families, and carry out the responsibilities stated in RCW 13.32A.090. The responsibilities stated in RCW 13.32A.090 may, in any of the centers, be carried out by the department.

(5) The secure facilities located within crisis residential centers shall be operated to conform with the definition in RCW 13.32A.030. The facilities shall have an average of no less than one adult staff member to every ten children. The staffing ratio shall continue to ensure the safety of the children.

(6) If a secure crisis residential center is located in or adjacent to a secure juvenile detention facility, the center shall be operated in a manner that prevents in-person contact between the residents of the center and the persons held in such facility. [2009 c 520 § 53; 1998 c 296 § 4; 1995 c 312 § 60; 1979 c 155 § 78.]

Findings—Intent—Part headings not law—Short title—1998 c 296: See notes following RCW 74.13.025.

Short title—1995 c 312: See note following RCW 13.32A.010.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

74.13.0321 Secure facilities—Limit on reimbursement or compensation. No contract may provide reimbursement or compensation to:

(1) A secure facility located in a juvenile detention center for any service delivered or provided to a resident child after five consecutive days of residence; or

(2) A secure facility not located in a juvenile detention center or a semi-secure crisis residential center facility for any service delivered or provided to a resident child after fifteen consecutive days of residence. [2009 c 569 § 2; 1995 c 312 § 61.]

Short title—1995 c 312: See note following RCW 13.32A.010.

74.13.033 Crisis residential centers—Removal from—Services available—Unauthorized leave. (1) If a resident of a crisis residential center becomes by his or her behavior disruptive to the facility's program, such resident may be immediately removed to a separate area within the facility and counseled on an individual basis until such time as the child regains his or her composure. The department may set rules and regulations establishing additional procedures for dealing with severely disruptive children on the premises.

(2) When the juvenile resides in this facility, all services deemed necessary to the juvenile's reentry to normal family life shall be made available to the juvenile as required by chapter 13.32A RCW. In assessing the child and providing these services, the facility staff shall:

(a) Interview the juvenile as soon as possible;

(b) Contact the juvenile's parents and arrange for a counseling interview with the juvenile and his or her parents as soon as possible;

(c) Conduct counseling interviews with the juvenile and his or her parents, to the end that resolution of the child/parent conflict is attained and the child is returned home as soon as possible;

(d) Provide additional crisis counseling as needed, to the end that placement of the child in the crisis residential center will be required for the shortest time possible, but not to exceed fifteen consecutive days; and

(e) Convene, when appropriate, a multidisciplinary team.

(3) Based on the assessments done under subsection (2) of this section the center staff may refer any child who, as the result of a mental or emotional disorder, or intoxication by alcohol or other drugs, is suicidal, seriously assaultive, or seriously destructive toward others, or otherwise similarly

evidences an immediate need for emergency medical evaluation and possible care, for evaluation pursuant to chapter 71.34 RCW, to a mental health professional pursuant to chapter 71.05 RCW, or to a chemical dependency specialist pursuant to chapter 70.96A RCW whenever such action is deemed appropriate and consistent with law.

(4) A juvenile taking unauthorized leave from a facility shall be apprehended and returned to it by law enforcement officers or other persons designated as having this authority as provided in RCW 13.32A.050. If returned to the facility after having taken unauthorized leave for a period of more than twenty-four hours a juvenile shall be supervised by such a facility for a period, pursuant to this chapter, which, unless where otherwise provided, may not exceed fifteen consecutive days. Costs of housing juveniles admitted to crisis residential centers shall be assumed by the department for a period not to exceed fifteen consecutive days. [2009 c 569 § 3; 2000 c 162 § 16; 2000 c 162 § 7; 1995 c 312 § 62; 1992 c 205 § 213; 1979 c 155 § 79.]

Effective date—2000 c 162 §§ 11-17: See note following RCW 13.32A.060.

Short title—1995 c 312: See note following RCW 13.32A.010.

Part headings not law—Severability—1992 c 205: See notes following RCW 13.40.010.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

74.13.034 Crisis residential centers—Removal to another center or secure facility—Placement in secure juvenile detention facility. (1) A child taken into custody and taken to a crisis residential center established pursuant to RCW 74.13.032 may, if the center is unable to provide appropriate treatment, supervision, and structure to the child, be taken at department expense to another crisis residential center, the nearest regional secure crisis residential center, or a secure facility with which it is collocated under RCW 74.13.032. Placement in both locations shall not exceed fifteen consecutive days from the point of intake as provided in RCW 13.32A.130.

(2) A child taken into custody and taken to a crisis residential center established by this chapter may be placed physically by the department or the department's designee and, at departmental expense and approval, in a secure juvenile detention facility operated by the county in which the center is located for a maximum of forty-eight hours, including Saturdays, Sundays, and holidays, if the child has taken unauthorized leave from the center and the person in charge of the center determines that the center cannot provide supervision and structure adequate to ensure that the child will not again take unauthorized leave. Juveniles placed in such a facility pursuant to this section may not, to the extent possible, come in contact with alleged or convicted juvenile or adult offenders.

(3) Any child placed in secure detention pursuant to this section shall, during the period of confinement, be provided with appropriate treatment by the department or the department's designee, which shall include the services defined in RCW 74.13.033(2). If the child placed in secure detention is not returned home or if an alternative living arrangement agreeable to the parent and the child is not made within twenty-four hours after the child's admission, the child shall be taken at the department's expense to a crisis residential center. Placement in the crisis residential center or centers plus placement in juvenile detention shall not exceed five consecutive days from the point of intake as provided in RCW 13.32A.130.

(4) Juvenile detention facilities used pursuant to this section shall first be certified by the department to ensure that juveniles placed in the facility pursuant to this section are provided with living conditions suitable to the well-being of the child. Where space is available, juvenile courts, when certified by the department to do so, shall provide secure placement for juveniles pursuant to this section, at department expense. [2009 c 569 § 4; 2000 c 162 § 17; 2000 c 162 § 8; 1995 c 312 § 63; 1992 c 205 § 214; 1991 c 364 § 5; 1981 c 298 § 17; 1979 ex.s. c 165 § 21; 1979 c 155 § 80.]

Effective date—2000 c 162 §§ 11-17: See note following RCW 13.32A.060.

Short title—1995 c 312: See note following RCW 13.32A.010.

Part headings not law—Severability—1992 c 205: See notes following RCW 13.40.010.

Conflict with federal requirements—1991 c 364: See note following RCW 70.96A.020.

Severability—1981 c 298: See note following RCW 13.32A.040.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Child admitted to secure facility—Maximum hours of custody—Reconciliation effort—Information to parent and child—Written statement of services and rights: RCW 13.32A.130.

74.13.036 Implementation of chapters 13.32A and 13.34 RCW. (1) The department shall oversee implementation of chapter 13.34 RCW and chapter 13.32A RCW. The oversight shall be comprised of working with affected parts of the criminal justice and child care systems as well as with local government, legislative, and executive authorities to effectively carry out these chapters. The department shall work with all such entities to ensure that chapters 13.32A and 13.34 RCW are implemented in a uniform manner throughout the state.

(2) The department shall develop a plan and procedures, in cooperation with the statewide advisory committee, to insure the full implementation of the provisions of chapter 13.32A RCW. Such plan and procedures shall include but are not limited to:

(a) Procedures defining and delineating the role of the department and juvenile court with regard to the execution of the child in need of services placement process;

(b) Procedures for designating department or supervising agency staff responsible for family reconciliation services;

(c) Procedures assuring enforcement of contempt proceedings in accordance with RCW 13.32A.170 and 13.32A.250; and

(d) Procedures for the continued education of all individuals in the criminal juvenile justice and child care systems who are affected by chapter 13.32A RCW, as well as members of the legislative and executive branches of government.

There shall be uniform application of the procedures developed by the department and juvenile court personnel, to the extent practicable. Local and regional differences shall be taken into consideration in the development of procedures required under this subsection.

(3) In addition to its other oversight duties, the department shall:

(a) Identify and evaluate resource needs in each region of the state;

(b) Disseminate information collected as part of the oversight process to affected groups and the general public;

(c) Educate affected entities within the juvenile justice and child care systems, local government, and the legislative branch regarding the implementation of chapters 13.32A and 13.34 RCW;

(d) Review complaints concerning the services, policies, and procedures of those entities charged with implementing chapters 13.32A and 13.34 RCW; and

(e) Report any violations and misunderstandings regarding the implementation of chapters 13.32A and 13.34 RCW. [2009 c 520 § 54; 2009 c 518 § 5; 2003 c 207 § 2; 1996 c 133 § 37; 1995 c 312 § 65; 1989 c 175 § 147; 1987 c 505 § 70; 1985 c 257 § 11; 1981 c 298 § 18; 1979 c 155 § 82.]

Reviser's note: This section was amended by 2009 c 518 § 5 and by 2009 c 520 § 54, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Findings—Short title—Intent—Construction—1996 c 133: See notes following RCW 13.32A.197.

Short title—1995 c 312: See note following RCW 13.32A.010.

Effective date—1989 c 175: See note following RCW 34.05.010.

Severability—1985 c 257: See note following RCW 13.34.165.

Severability—1981 c 298: See note following RCW 13.32A.040.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

74.13.037 Transitional living programs for youth in the process of being emancipated—Rules. Within available funds appropriated for this purpose, the department shall establish, through performance-based contracts with private vendors, transitional living programs for youth who are being assisted by the department in being emancipated as part of their permanency plan under chapter 13.34 RCW. These programs shall be licensed under rules adopted by the department. [2009 c 520 § 55; 1997 c 146 § 9; 1996 c 133 § 39.]

Findings—Short title—Intent—Construction—1996 c 133: See notes following RCW 13.32A.197.

74.13.042 Petition for order compelling disclosure of record or information. If the department or supervising agency is denied lawful access to records or information, or requested records or information is not provided in a timely manner, the department or supervising agency may petition the court for an order compelling disclosure.

(1) The petition shall be filed in the juvenile court for the county in which the record or information is located or the county in which the person who is the subject of the record or information resides. If the person who is the subject of the record or information is a party to or the subject of a pending proceeding under chapter 13.32A or 13.34 RCW, the petition shall be filed in such proceeding.

(2) Except as otherwise provided in this section, the persons from whom and about whom the record or information is sought shall be served with a summons and a petition at least seven calendar days prior to a hearing on the petition. The court may order disclosure upon ex parte application of the department or supervising agency, without prior notice to any person, if the court finds there is reason to believe access to the record or information is necessary to determine whether the child is in imminent danger and in need of immediate protection.

(3) The court shall grant the petition upon a showing that there is reason to believe that the record or information sought is necessary for the health, safety, or welfare of the child who is currently receiving child welfare services. [2009 c 520 § 56; 1995 c 311 § 14.]

74.13.045 Complaint resolution process. The department shall develop and implement an informal, nonadversarial complaint resolution process to be used by clients of the department or supervising agency, foster parents, and other affected individuals who have complaints regarding a department policy or procedure, the application of such a policy or procedure, or the performance of an entity that has entered into a performance-based contract with the department, related to programs administered under this chapter. The process shall not apply in circumstances where the complainant has the right under Title 13, 26, or 74 RCW to seek resolution of the complaint through judicial review or through an adjudicative proceeding.

Nothing in this section shall be construed to create substantive or procedural rights in any person. Participation in the complaint resolution process shall not entitle any person to an adjudicative proceeding under chapter 34.05 RCW or to superior court review. Participation in the process shall not affect the right of any person to seek other statutorily or constitutionally permitted remedies.

The department shall develop procedures to assure that clients and foster parents are informed of the availability of the complaint resolution process and how to access it. The department shall incorporate information regarding the complaint resolution process into the training for foster parents and department and supervising agency caseworkers.

The department shall compile complaint resolution data including the nature of the complaint and the outcome of the process. [2009 c 520 § 57; 1998 c 245 § 146; 1991 c 340 § 2.]

Intent—1991 c 340: "It is the intent of the legislature to provide timely, thorough, and fair procedures for resolution of grievances of clients, foster parents, and the community resulting from decisions made by the department of social and health services related to programs administered pursuant to this chapter. Grievances should be resolved at the lowest level possible. However, all levels of the department should be accountable and responsible to individuals who are experiencing difficulties with agency services or decisions. It is the intent of the legislature that grievance procedures be made available to individuals who do not have other remedies available through judicial review or adjudicative proceedings." [1991 c 340 § 1.]

74.13.055 Foster care—Length of stay—Cooperation with supervising agencies. The department shall adopt rules pursuant to chapter 34.05 RCW which establish goals as to the maximum number of children who will remain in foster care for a period of longer than twenty-four months. The department shall also work cooperatively with supervising agencies to assure that a partnership plan for utilizing the resources of the public and private sector in all matters pertaining to child welfare is developed and implemented. [2009 c 520 § 58; 1998 c 245 § 147; 1982 c 118 § 1.]

74.13.060 Secretary as custodian of funds of person placed with department or its agent—Authority—Limitations—Termination. (1) The secretary or his or her designees or delegatees shall be the custodian without compensation of such moneys and other funds of any person which may come into the possession of the secretary during the period such person is placed with the department or an entity with which it has entered into a performance-based contract pursuant to chapter 74.13 RCW. As such custodian, the secretary shall have authority to disburse moneys from the person's funds for the following purposes only and subject to the following limitations:

(a) For such personal needs of such person as the secretary may deem proper and necessary.

(b) Against the amount of public assistance otherwise payable to such person. This includes applying, as reimbursement, any benefits, payments, funds, or accrual paid to or on behalf of said person from any source against the amount of public assistance expended on behalf of said person during the period for which the benefits, payments, funds or accruals were paid.

(2) All funds held by the secretary as custodian may be deposited in a single fund, the receipts and expenditures therefrom to be accurately accounted for by him or her on an individual basis. Whenever, the funds belonging to any one person exceed the sum of five hundred dollars, the secretary may deposit said funds in a savings and loan association account on behalf of that particular person.

(3) When the conditions of placement no longer exist and public assistance is no longer being provided for such person, upon a showing of legal competency and proper authority, the secretary shall deliver to such person, or the parent, person, or agency legally responsible for such person, all funds belonging to the person remaining in his or her possession as custodian, together with a full and final accounting of all receipts and expenditures made therefrom.

(4) The appointment of a guardian for the estate of such person shall terminate the secretary's authority as custodian of said funds upon receipt by the secretary of a certified copy of letters of guardianship. Upon the guardian's request, the secretary shall immediately forward to such guardian any funds of such person remaining in the secretary's possession together with full and final accounting of all receipts and expenditures made therefrom. [2009 c 520 § 59; 1971 ex.s. c 169 § 7.]

74.13.065 Out-of-home care—Social study required. (1) The department or supervising agency shall conduct a social study whenever a child is placed in out-of-home care under the supervision of the department or supervising agency. The study shall be conducted prior to placement, or, if it is not feasible to conduct the study prior to placement due to the circumstances of the case, the study shall be conducted as soon as possible following placement.

(2) The social study shall include, but not be limited to, an assessment of the following factors:

(a) The physical and emotional strengths and needs of the child;

(b) Emotional bonds with siblings and the need to maintain regular sibling contacts;

(c) The proximity of the child's placement to the child's family to aid reunification;

(d) The possibility of placement with the child's relatives or extended family;

(e) The racial, ethnic, cultural, and religious background of the child;

(f) The least-restrictive, most family-like placement reasonably available and capable of meeting the child's needs; and

(g) Compliance with RCW 13.34.260 regarding parental preferences for placement of their children. [2009 c 520 § 60; 2002 c 52 § 8; 1995 c 311 § 26.]

Intent—2002 c 52: See note following RCW 13.34.025.

74.13.075 Sexually aggressive youth—Defined—Services—Expenditure of treatment funds—Tribal jurisdiction—Information sharing and confidentiality. (1) For the purposes of funds appropriated for the treatment of sexually aggressive youth, the term "sexually aggressive youth" means those juveniles who:

(a) Have been abused and have committed a sexually aggressive act or other violent act that is sexual in nature; and

(i) Are in the care and custody of the state or a federally recognized Indian tribe located within the state; or

(ii) Are the subject of a proceeding under chapter 13.34 RCW or a child welfare proceeding held before a tribal court located within the state; or

(b) Cannot be detained under the juvenile justice system due to being under age twelve and incompetent to stand trial for acts that could be prosecuted as sex offenses as defined by RCW 9.94A.030 if the juvenile was over twelve years of age, or competent to stand trial if under twelve years of age.

(2) The department may offer appropriate available services and treatment to a sexually aggressive youth and his or her parents or legal guardians as provided in this section and may refer the child and his or her parents to appropriate treatment and services available within the community, regardless of whether the child is the subject of a proceeding under chapter 13.34 RCW.

(3) In expending these funds, the department shall establish in each region a case review committee to review all cases for which the funds are used. In determining whether to use these funds in a particular case, the committee shall consider:

(a) The age of the juvenile;

(b) The extent and type of abuse to which the juvenile has been subjected;

(c) The juvenile's past conduct;

(d) The benefits that can be expected from the treatment;

(e) The cost of the treatment; and

(f) The ability of the juvenile's parent or guardian to pay for the treatment.

(4) The department may provide funds, under this section, for youth in the care and custody of a tribe or through a tribal court, for the treatment of sexually aggressive youth only if: (a) The tribe uses the same or equivalent definitions and standards for determining which youth are sexually aggressive; and (b) the department seeks to recover any federal funds available for the treatment of youth.

(5) A juvenile's status as a sexually aggressive youth, and any protective plan, services, and treatment plans and progress reports provided with these funds are confidential and not subject to public disclosure by the department. This information shall be shared with relevant juvenile care agencies, law enforcement agencies, and schools, but remains confidential and not subject to public disclosure by those agencies. [2009 c 520 § 61; 2009 c 250 § 2; 1994 c 169 § 1. Prior: 1993 c 402 § 3; 1993 c 146 § 1; 1990 c 3 § 305.]

Reviser's note: This section was amended by 2009 c 250 § 2 and by 2009 c 520 § 61, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Finding—2009 c 250: "The legislature finds that children who commit sexually aggressive acts are at risk of repeating such behavior if they and their families do not receive treatment and counseling. This is especially true of children under the age of twelve who are referred to the department of social and health services by a prosecuting attorney pursuant to RCW 26.44.160. To reduce the number of future victims of sexual abuse and to reduce recidivism of children who commit sexually aggressive acts the legislature finds that all such children and their families, including children who are referred by prosecutors pursuant to RCW 26.44.160, be eligible for treatment regardless of whether they are the subject of a proceeding under chapter 13.34 RCW." [2009 c 250 § 1.]

Index, part headings not law—Severability—Effective dates—Application—1990 c 3: See RCW 18.155.900 through 18.155.902.

74.13.077 Sexually aggressive youth—Transfer of surplus funds for treatment. The secretary is authorized to transfer surplus, unused treatment funds from the civil commitment center operated under chapter 71.09 RCW to the division of children and family services to provide treatment services for sexually aggressive youth. [2009 c 520 § 62; 1993 c 402 § 4.]

74.13.085 Recodified as RCW 43.215.495. See Supplementary Table of Disposition of Former RCW Sections, this volume.

74.13.0902 Recodified as RCW 43.215.550. See Supplementary Table of Disposition of Former RCW Sections, this volume.

74.13.095 Recodified as RCW 43.215.555. See Supplementary Table of Disposition of Former RCW Sections, this volume.

74.13.096 Representation of children of color—Advisory committee. ***(Expires June 30, 2014.)*** (1) The secretary shall convene an advisory committee to analyze and make recommendations on the disproportionate representation of children of color in Washington's child welfare system. The department shall collaborate with the Washington institute for public policy and private sector entities to develop a methodology for the advisory committee to follow in conducting a baseline analysis of data from the child welfare system to determine whether racial disproportionality and racial disparity exist in this system. The Washington institute for public policy shall serve as technical staff for the advisory committee. In determining whether racial disproportionality or racial disparity exists, the committee shall utilize existing research and evaluations conducted within Washington state, nationally, and in other states and localities that have similarly analyzed the prevalence of racial disproportionality and disparity in child welfare.

(2) At a minimum, the advisory committee shall examine and analyze: (a) The level of involvement of children of color at each stage in the state's child welfare system, including the points of entry and exit, and each point at which a treatment decision is made; (b) the number of children of color in low-income or single-parent families involved in the state's child welfare system; (c) the family structures of families involved in the state's child welfare system; and (d) the outcomes for children in the existing child welfare system. This analysis shall be disaggregated by racial and ethnic group, and by geographic region.

(3) The committee of not more than fifteen individuals shall consist of experts in social work, law, child welfare, psychology, or related fields, at least two tribal representatives, a representative of the governor's juvenile justice advisory committee, a representative of a community-based organization involved with child welfare issues, a representative of the department, a current or former foster care youth, a current or former foster care parent, and a parent previously involved with Washington's child welfare system. Committee members shall be selected as follows: (a) Five members selected by the senate majority leader; (b) five members selected by the speaker of the house of representatives; and (c) five members selected by the secretary of the department. The secretary, the senate majority leader, and the speaker of the house of representatives shall coordinate appointments to ensure the representation specified in this subsection is achieved. After the advisory committee appointments are finalized, the committee shall select two individuals to serve as cochairs of the committee, one of whom shall be a representative from a nongovernmental entity.

(4) The secretary shall make reasonable efforts to seek public and private funding for the advisory committee.

(5) Not later than June 1, 2008, the advisory committee created in subsection (1) of this section shall report to the secretary of the department on the results of the analysis. If the results of the analysis indicate disproportionality or disparity exists for any racial or ethnic group in any region of the state, the committee, in conjunction with the secretary of the department, shall develop a plan for remedying the disproportionality or disparity. The remediation plan shall include: (a) Recommendations for administrative and legislative actions related to appropriate programs and services to reduce and eliminate disparities in the system and improve the long-term outcomes for children of color who are served by the system; and (b) performance measures for implementing the remediation plan. To the extent possible and appropriate, the remediation plan shall be developed to integrate the recommendations required in this subsection with the department's existing compliance plans, training efforts, and other practice improvement and reform initiatives in progress. The advisory committee shall be responsible for ongoing evaluation of current and prospective policies and procedures for their contribution to or effect on racial disproportionality and disparity.

(6) Not later than December 1, 2008, the secretary shall report the results of the analysis conducted under subsection (2) of this section and shall describe the remediation plan required under subsection (5) of this section to the appropri-

ate committees of the legislature with jurisdiction over policy and fiscal matters relating to children, families, and human services. Beginning January 1, 2010, the secretary shall report annually to the appropriate committees of the legislature on the implementation of the remediation plan, including any measurable progress made in reducing and eliminating racial disproportionality and disparity in the state's child welfare system. [2009 c 520 § 63; 2007 c 465 § 2.]

Expiration date—2009 c 520 § 63: "Section 63 of this act expires June 30, 2014." [2009 c 520 § 96.]

Findings—2007 c 465: "The legislature finds that one in five of Washington's one and one-half million children are children of color. Broken out by racial groups, approximately six percent of children are Asian/Pacific Islander, six percent are multiracial, four and one-half percent are African American, and two percent are Native American. Thirteen percent of Washington children are of Hispanic origin, but representation of this group increases in the lower age ranges. For example, seventeen percent of children birth to four years of age are Hispanic.

The legislature also finds that in counties such as Adams, Franklin, Yakima, and Grant, more than half of the births are of Hispanic origin. Three-quarters of the state's African American children and two-thirds of Asian/Pacific Islander children live in King and Pierce counties. The legislature finds further that despite some progress closing the achievement gap in recent years, children of color continue to lag behind their classmates on the Washington assessment of student learning. In 2005 children of color trailed in every category of the fourth-grade reading, writing, and math assessments. On the reading test alone, sixty-nine percent of African American students, sixty-four percent of Native American students, and sixty-one percent of Hispanic students met the standards, compared with eighty-five percent of caucasian students. And, since 1993, the number of Washington students for which English is not their first language has doubled to more than seven percent of students statewide.

The legislature finds further that according to national research, African American children enter the child welfare system at far higher rates than caucasian children, despite no greater incidence of maltreatment in African American families compared to caucasian families. This trend holds true for Washington state, where African American children represent approximately nine and one-half percent of the children in out-of-home care even though they represent slightly more than four percent of the state's total child population. Native American children represent slightly over ten percent of the children in out-of-home care although they represent only two percent of the children in the state. In King county, African American and Native American children are over represented at nearly every decision point in the child welfare system. Although these two groups of children represent only eight percent of the child population in King county, they account for one-third of all children removed from their homes and one-half of children in foster care for more than four years.

The legislature finds also that children of immigrants are the fastest growing component of the United States' child population. While immigrants are eleven percent of the nation's total population, the children of immigrants make up twenty-two percent of the nation's children under six years of age. These immigrant children are twice as likely as native-born children to be poor." [2007 c 465 § 1.]

Expiration date—2007 c 465: "This act expires June 30, 2014." [2007 c 465 § 3.]

74.13.100 Recodified as RCW 74.13A.005. See Supplementary Table of Disposition of Former RCW Sections, this volume.

74.13.103 Recodified as RCW 74.13A.010. See Supplementary Table of Disposition of Former RCW Sections, this volume.

74.13.106 Recodified as RCW 74.13A.015. See Supplementary Table of Disposition of Former RCW Sections, this volume.

74.13.109 Recodified as RCW 74.13A.020. See Supplementary Table of Disposition of Former RCW Sections, this volume.

74.13.112 Recodified as RCW 74.13A.025. See Supplementary Table of Disposition of Former RCW Sections, this volume.

74.13.115 Recodified as RCW 74.13A.030. See Supplementary Table of Disposition of Former RCW Sections, this volume.

74.13.116 Recodified as RCW 74.13A.035. See Supplementary Table of Disposition of Former RCW Sections, this volume.

74.13.118 Recodified as RCW 74.13A.040. See Supplementary Table of Disposition of Former RCW Sections, this volume.

74.13.121 Recodified as RCW 74.13A.045. See Supplementary Table of Disposition of Former RCW Sections, this volume.

74.13.124 Recodified as RCW 74.13A.050. See Supplementary Table of Disposition of Former RCW Sections, this volume.

74.13.127 Recodified as RCW 74.13A.055. See Supplementary Table of Disposition of Former RCW Sections, this volume.

74.13.130 Recodified as RCW 74.13A.060. See Supplementary Table of Disposition of Former RCW Sections, this volume.

74.13.133 Recodified as RCW 74.13A.065. See Supplementary Table of Disposition of Former RCW Sections, this volume.

74.13.136 Recodified as RCW 74.13A.070. See Supplementary Table of Disposition of Former RCW Sections, this volume.

74.13.139 Recodified as RCW 74.13A.075. See Supplementary Table of Disposition of Former RCW Sections, this volume.

74.13.145 Recodified as RCW 74.13A.080. See Supplementary Table of Disposition of Former RCW Sections, this volume.

74.13.150 Recodified as RCW 74.13A.085. See Supplementary Table of Disposition of Former RCW Sections, this volume.

74.13.152 Recodified as RCW 74.13A.090. See Supplementary Table of Disposition of Former RCW Sections, this volume.

74.13.153 Recodified as RCW 74.13A.095. See Supplementary Table of Disposition of Former RCW Sections, this volume.

74.13.154 Recodified as RCW 74.13A.100. See Supplementary Table of Disposition of Former RCW Sections, this volume.

74.13.155 Recodified as RCW 74.13A.105. See Supplementary Table of Disposition of Former RCW Sections, this volume.

74.13.156 Recodified as RCW 74.13A.110. See Supplementary Table of Disposition of Former RCW Sections, this volume.

74.13.157 Recodified as RCW 74.13A.115. See Supplementary Table of Disposition of Former RCW Sections, this volume.

74.13.158 Recodified as RCW 74.13A.120. See Supplementary Table of Disposition of Former RCW Sections, this volume.

74.13.159 Recodified as RCW 74.13A.125. See Supplementary Table of Disposition of Former RCW Sections, this volume.

74.13.165 Recodified as RCW 74.13A.130. See Supplementary Table of Disposition of Former RCW Sections, this volume.

74.13.170 Therapeutic family home program for youth in custody under chapter 13.34 RCW. The department may, through performance-based contracts with supervising agencies, implement a therapeutic family home program for up to fifteen youth in the custody of the department under chapter 13.34 RCW. The program shall strive to develop and maintain a mutually reinforcing relationship between the youth and the therapeutic staff associated with the program. [2009 c 520 § 70; 1991 c 326 § 2.]

Part headings not law—Severability—1991 c 326: See RCW 71.36.900 and 71.36.901.

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

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

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

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

74.13.232 Services to homeless families. The department's duty to provide services to homeless families with children is set forth in RCW 43.20A.790 and in appropriations provided by the legislature for implementation of the comprehensive plan for homeless families with children. [2009 c 520 § 50.]

74.13.250 Preservice training—Foster parents. (1) Preservice training is recognized as a valuable tool to reduce placement disruptions, the length of time children are in care, and foster parent turnover rates. Preservice training also assists potential foster parents in making their final decisions about foster parenting and assists social service agencies in obtaining information about whether to approve potential foster parents.

(2) Foster parent preservice training shall include information about the potential impact of placement on foster children; social service agency administrative processes; the requirements, responsibilities, expectations, and skills needed to be a foster parent; attachment, separation, and loss issues faced by birth parents, foster children, and foster parents; child management and discipline; birth family relationships; information on the limits of the adoption support program as provided in *RCW 74.13.109(4); and helping children leave foster care. Preservice training shall assist applicants in making informed decisions about whether they want to be foster parents. Preservice training shall be designed to enable the agency to assess the ability, readiness, and appropriateness of families to be foster parents. As a decision tool, effective preservice training provides potential foster parents with enough information to make an appropriate decision, affords potential foster parents an opportunity to discuss their decision with others and consider its implications for their family, clarifies foster family expectations, presents a realistic picture of what foster parenting involves, and allows potential foster parents to consider and explore the different types of children they might serve.

(3) Foster parents shall complete preservice training before the issuance of a foster care license, except that the department may, on a case by case basis, issue a written waiver that allows the foster parent to complete the training after licensure, so long as the training is completed within ninety days following licensure. [2009 c 520 § 71; 2009 c 491 § 10; 1990 c 284 § 2.]

Reviser's note: *(1) RCW 74.13.109 was recodified as RCW 74.13A.020 pursuant to 2009 c 520 § 95.

(2) This section was amended by 2009 c 491 § 10 and by 2009 c 520 § 71, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Finding—1990 c 284: "The legislature finds that the foster care system plays an important role in preserving families and giving consistent and nurturing care to children placed in its care. The legislature further finds that foster parents play an integral and important role in the system and particularly in the child's chances for the earliest possible reunification with his or her family." [1990 c 284 § 1.]

Effective date—1990 c 284: "This act shall take effect July 1, 1990, however the secretary may immediately take any steps necessary to ensure implementation of section 17 of this act on July 1, 1990." [1990 c 284 § 27.]

74.13.280 Client information. (1) Except as provided in RCW 70.24.105, whenever a child is placed in out-of-home care by the department or a supervising agency, the department or agency shall share information known to the department or agency about the child and the child's family with the care provider and shall consult with the care provider regarding the child's case plan. If the child is dependent pur-

suant to a proceeding under chapter 13.34 RCW, the department or supervising agency shall keep the care provider informed regarding the dates and location of dependency review and permanency planning hearings pertaining to the child.

(2) Information about the child and the child's family shall include information known to the department or agency as to whether the child is a sexually reactive child, has exhibited high-risk behaviors, or is physically assaultive or physically aggressive, as defined in this section.

(3) Information about the child shall also include information known to the department or agency that the child:

(a) Has received a medical diagnosis of fetal alcohol syndrome or fetal alcohol effect;

(b) Has been diagnosed by a qualified mental health professional as having a mental health disorder;

(c) Has witnessed a death or substantial physical violence in the past or recent past; or

(d) Was a victim of sexual or severe physical abuse in the recent past.

(4) Any person who receives information about a child or a child's family pursuant to this section shall keep the information confidential and shall not further disclose or disseminate the information except as authorized by law. Care providers shall agree in writing to keep the information that they receive confidential and shall affirm that the information will not be further disclosed or disseminated, except as authorized by law.

(5) Nothing in this section shall be construed to limit the authority of the department or supervising agencies to disclose client information or to maintain client confidentiality as provided by law.

(6) As used in this section:

(a) "Sexually reactive child" means a child who exhibits sexual behavior problems including, but not limited to, sexual behaviors that are developmentally inappropriate for their age or are harmful to the child or others.

(b) "High-risk behavior" means an observed or reported and documented history of one or more of the following:

(i) Suicide attempts or suicidal behavior or ideation;

(ii) Self-mutilation or similar self-destructive behavior;

(iii) Fire-setting or a developmentally inappropriate fascination with fire;

(iv) Animal torture;

(v) Property destruction; or

(vi) Substance or alcohol abuse.

(c) "Physically assaultive or physically aggressive" means a child who exhibits one or more of the following behaviors that are developmentally inappropriate and harmful to the child or to others:

(i) Observed assaultive behavior;

(ii) Reported and documented history of the child willfully assaulting or inflicting bodily harm; or

(iii) Attempting to assault or inflict bodily harm on other children or adults under circumstances where the child has the apparent ability or capability to carry out the attempted assaults including threats to use a weapon. [2009 c 520 § 72. Prior: 2007 c 409 § 6; 2007 c 220 § 4; 2001 c 318 § 3; 1997 c 272 § 7; 1995 c 311 § 21; 1991 c 340 § 4; 1990 c 284 § 10.]

Effective date—2007 c 409: See note following RCW 13.34.096.

Effective date—1997 c 272: See note following RCW 74.13.031.

Finding—Effective date—1990 c 284: See notes following RCW 74.13.250.

74.13.283 Washington state identicards—Foster youth. (1) For the purpose of assisting foster youth in obtaining a Washington state identicard, submission of the information and materials listed in this subsection from the department or supervising agency to the department of licensing is sufficient proof of identity and residency and shall serve as the necessary authorization for the youth to apply for and obtain a Washington state identicard:

(a) A written signed statement prepared on department or supervising agency letterhead, verifying the following:

(i) The youth is a minor who resides in Washington;

(ii) Pursuant to a court order, the youth is dependent and the department or supervising agency is the legal custodian of the youth under chapter 13.34 RCW or under the interstate compact on the placement of children;

(iii) The youth's full name and date of birth;

(iv) The youth's social security number, if available;

(v) A brief physical description of the youth;

(vi) The appropriate address to be listed on the youth's identicard; and

(vii) Contact information for the appropriate person with the department or supervising agency.

(b) A photograph of the youth, which may be digitized and integrated into the statement.

(2) The department or supervising agency may provide the statement and the photograph via any of the following methods, whichever is most efficient or convenient:

(a) Delivered via first-class mail or electronically to the headquarters office of the department of licensing; or

(b) Hand-delivered to a local office of the department of licensing by a department or supervising agency case worker.

(3) A copy of the statement shall be provided to the youth who shall provide the copy to the department of licensing when making an in-person application for a Washington state identicard.

(4) To the extent other identifying information is readily available, the department or supervising agency shall include the additional information with the submission of information required under subsection (1) of this section. [2009 c 520 § 73; 2008 c 267 § 7.]

74.13.285 Passports—Information to be provided to foster parents. (1) Within available resources, the department or supervising agency shall prepare a passport containing all known and available information concerning the mental, physical, health, and educational status of the child for any child who has been in a foster home for ninety consecutive days or more. The passport shall contain education records obtained pursuant to RCW 28A.150.510. The passport shall be provided to a foster parent at any placement of a child covered by this section. The department or supervising agency shall update the passport during the regularly scheduled court reviews required under chapter 13.34 RCW.

New placements shall have first priority in the preparation of passports.

(2) In addition to the requirements of subsection (1) of this section, the department or supervising agency shall, within available resources, notify a foster parent before

placement of a child of any known health conditions that pose a serious threat to the child and any known behavioral history that presents a serious risk of harm to the child or others.

(3) The department shall hold harmless the provider including supervising agencies for any unauthorized disclosures caused by the department.

(4) Any foster parent who receives information about a child or a child's family pursuant to this section shall keep the information confidential and shall not further disclose or disseminate the information, except as authorized by law. Such individuals shall agree in writing to keep the information that they receive confidential and shall affirm that the information will not be further disclosed or disseminated, except as authorized by law. [2009 c 520 § 74; 2007 c 409 § 7; 2000 c 88 § 2; 1997 c 272 § 5.]

Effective date—2007 c 409: See note following RCW 13.34.096.

Effective date—1997 c 272: See note following RCW 74.13.031.

74.13.288 Blood-borne pathogens—Testing. The department of health shall develop recommendations concerning evidence-based practices for testing for blood-borne pathogens of children under one year of age who have been placed in out-of-home care and shall identify the specific pathogens for which testing is recommended. [2009 c 520 § 75; 2004 c 40 § 2.]

74.13.289 Blood-borne pathogens—Client information—Training. (1) Upon any placement, the department or supervising agency shall inform each out-of-home care provider if the child to be placed in that provider's care is infected with a blood-borne pathogen, and shall identify the specific blood-borne pathogen for which the child was tested if known by the department or supervising agency.

(2) All out-of-home care providers licensed by the department shall receive training related to blood-borne pathogens, including prevention, transmission, infection control, treatment, testing, and confidentiality.

(3) Any disclosure of information related to HIV must be in accordance with RCW 70.24.105.

(4) The department of health shall identify by rule the term "blood-borne pathogen" as used in this section. [2009 c 520 § 76; 2004 c 40 § 3.]

74.13.290 Fewest possible placements for children—Preferred placements. (1) To provide stability to children in out-of-home care, placement selection shall be made with a view toward the fewest possible placements for each child. If possible, the initial placement shall be viewed as the only placement for the child. Pursuant to RCW 13.34.060 and 13.34.130, placement of the child with a relative or other suitable person is the preferred option. The use of short-term interim placements of thirty days or less to protect the child's health or safety while the placement of choice is being arranged is not a violation of this principle.

(2) If a child has been previously placed in out-of-home care and is subsequently returned to out-of-home care, and the department cannot locate an appropriate and available relative or other suitable person, the preferred placement for the child is in a foster family home where the child previously was placed, if the following conditions are met:

(a) The foster family home is available and willing to care for the child;

(b) The foster family is appropriate and able to meet the child's needs; and

(c) The placement is in the best interest of the child. [2009 c 482 § 1; 1990 c 284 § 11.]

Finding—Effective date—1990 c 284: See notes following RCW 74.13.250.

74.13.300 Notification of proposed placement changes. (1) Whenever a child has been placed in a foster family home by the department or supervising agency and the child has thereafter resided in the home for at least ninety consecutive days, the department or supervising agency shall notify the foster family at least five days prior to moving the child to another placement, unless:

(a) A court order has been entered requiring an immediate change in placement;

(b) The child is being returned home;

(c) The child's safety is in jeopardy; or

(d) The child is residing in a receiving home or a group home.

(2) If the child has resided in a foster family home for less than ninety days or if, due to one or more of the circumstances in subsection (1) of this section, it is not possible to give five days' notification, the department or supervising agency shall notify the foster family of proposed placement changes as soon as reasonably possible.

(3) This section is intended solely to assist in minimizing disruption to the child in changing foster care placements. Nothing in this section shall be construed to require that a court hearing be held prior to changing a child's foster care placement nor to create any substantive custody rights in the foster parents. [2009 c 520 § 77; 1990 c 284 § 12.]

Finding—Effective date—1990 c 284: See notes following RCW 74.13.250.

74.13.310 Foster parent training. Adequate foster parent training has been identified as directly associated with increasing the length of time foster parents are willing to provide foster care and reducing the number of placement disruptions for children. Placement disruptions can be harmful to children by denying them consistent and nurturing support. Foster parents have expressed the desire to receive training in addition to the foster parent training currently offered. Foster parents who care for more demanding children, such as children with severe emotional, mental, or physical handicaps, would especially benefit from additional training. The department and supervising agency shall develop additional training for foster parents that focuses on skills to assist foster parents in caring for emotionally, mentally, or physically handicapped children. [2009 c 520 § 78; 1990 c 284 § 13.]

Finding—Effective date—1990 c 284: See notes following RCW 74.13.250.

74.13.315 Child care for foster parents attending meetings or training. The department or supervising agency may provide child care for all foster parents who are required to attend department-sponsored or supervising agency-sponsored meetings or training sessions. If the department or supervising agency does not provide such child care, the

department or supervising agency, where feasible, shall conduct the activities covered by this section in the foster parent's home or other location acceptable to the foster parent. [2009 c 520 § 79; 1997 c 272 § 6.]

Effective date—1997 c 272: See note following RCW 74.13.031.

74.13.320 Printing informational materials—Department's duty. The department shall assist supervising agencies by providing printing services for informational brochures and other necessary recruitment materials. No more than fifty thousand dollars of the funds provided for this section may be expended annually for recruitment materials. [2009 c 520 § 80; 1990 c 284 § 15.]

Finding—Effective date—1990 c 284: See notes following RCW 74.13.250.

74.13.325 Foster care and adoptive home recruitment program. Within available resources, the department and supervising agencies shall increase the number of adoptive and foster families available to accept children through an intensive recruitment and retention program. The department shall enter into performance-based contracts with supervising agencies, under which the agencies will coordinate all foster care and adoptive home recruitment activities. [2009 c 520 § 81; 1997 c 272 § 3.]

Effective date—1997 c 272: See note following RCW 74.13.031.

74.13.333 Rights of foster parents—Complaints—Investigation—Notice of any personnel action—Report. (1) A foster parent who believes that a department or supervising agency employee has retaliated against the foster parent or in any other manner discriminated against the foster parent because:

(a) The foster parent made a complaint with the office of the family and children's ombudsman, the attorney general, law enforcement agencies, the department, or the supervising agency, provided information, or otherwise cooperated with the investigation of such a complaint;

(b) The foster parent has caused to be instituted any proceedings under or related to Title 13 RCW;

(c) The foster parent has testified or is about to testify in any proceedings under or related to Title 13 RCW;

(d) The foster parent has advocated for services on behalf of the foster child;

(e) The foster parent has sought to adopt a foster child in the foster parent's care; or

(f) The foster parent has discussed or consulted with anyone concerning the foster parent's rights under this chapter or chapter 74.15 or 13.34 RCW, may file a complaint with the office of the family and children's ombudsman.

(2) The ombudsman may investigate the allegations of retaliation. The ombudsman shall have access to all relevant information and resources held by or within the department by which to conduct the investigation. Upon the conclusion of its investigation, the ombudsman shall provide its findings in written form to the department.

(3) The department shall notify the office of the family and children's ombudsman in writing, within thirty days of receiving the ombudsman's findings, of any personnel action taken or to be taken with regard to the department employee.

(4) The office of the family and children's ombudsman shall also include its recommendations regarding complaints filed under this section in its annual report pursuant to RCW 43.06A.030. The office of the family and children's ombudsman shall identify trends which may indicate a need to improve relations between the department or supervising agency and foster parents. [2009 c 520 § 82; 2009 c 491 § 11; 2004 c 181 § 1.]

Reviser's note: This section was amended by 2009 c 491 § 11 and by 2009 c 520 § 82, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

74.13.334 Department and supervising agency's procedures to respond to foster parents' complaints. The department and supervising agency shall develop procedures for responding to recommendations of the office of the family and children's ombudsman as a result of any and all complaints filed by foster parents under RCW 74.13.333. [2009 c 520 § 83; 2004 c 181 § 2.]

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

74.13.360 Performance-based contracts—Child welfare demonstration sites—Department duties—Contracts with tribes. (1) No later than January 1, 2011, the department shall convert its current contracts with providers into performance-based contracts. In accomplishing this conversion, the department shall decrease the total number of contracts it uses to purchase services from providers.

(2) No later than July 1, 2012:

(a) In the demonstration sites selected under RCW 74.13.368(4)(a), child welfare services shall be provided by supervising agencies with whom the department has entered into performance-based contracts. Supervising agencies may enter into subcontracts with other licensed agencies; and

(b) Except as provided in subsection (4) of this section, and notwithstanding any law to the contrary, the department may not directly provide child welfare services to families and children provided child welfare services by supervising agencies in the demonstration sites selected under RCW 74.13.368(4)(a).

(3) No later than July 1, 2012, for families and children provided child welfare services by supervising agencies in the demonstration sites selected under RCW 74.13.368(4)(a), the department is responsible for only the following:

(a) Monitoring the quality of services for which the department contracts under this chapter;

(b) Ensuring that the services are provided in accordance with federal law and the laws of this state, including the Indian child welfare act;

(c) Providing child protection functions and services, including intake and investigation of allegations of child abuse or neglect, emergency shelter care functions under RCW 13.34.050, and referrals to appropriate providers; and

(d) Issuing licenses pursuant to chapter 74.15 RCW.

(4) No later than July 1, 2012, for families and children provided child welfare services by supervising agencies in the demonstration sites selected under RCW 74.13.368(4)(a), the department may provide child welfare services only in an

emergency or as a provider of last resort. The department shall adopt rules describing the circumstances under which the department may provide those services. For purposes of this section, "provider of last resort" means the department is unable to contract with a private agency to provide child welfare services in a particular geographic area or, after entering into a contract with a private agency, either the contractor or the department terminates the contract.

(5) For purposes of this chapter, on and after September 1, 2010, performance-based contracts shall be structured to hold the supervising agencies accountable for achieving the following goals in order of importance: Child safety; child permanency, including reunification; and child well-being.

(6) A federally recognized tribe located in this state may enter into a performance-based contract with the department to provide child welfare services to Indian children whether or not they reside on a reservation. [2009 c 520 § 3.]

74.13.362 Performance-based contracts—Legislative mandate. Pursuant to RCW 41.06.142(3), performance-based contracting under RCW 74.13.360 is expressly mandated by the legislature and is not subject to the processes set forth in RCW 41.06.142 (1), (4), and (5).

A continuation or expansion of delivery of child welfare services under the provisions of RCW 74.13.372 shall be considered expressly mandated by the legislature and not subject to the provisions of RCW 41.06.142 (1), (4), and (5). [2009 c 520 § 4.]

74.13.364 Performance-based contracts—State authority. Children whose cases are managed by a supervising agency remain under the care and placement authority of the state. [2009 c 520 § 5.]

74.13.366 Performance-based contracts—Preference for qualifying private nonprofit entities—Tribal exclusion. Performance-based contracts with private nonprofit entities who otherwise meet the definition of supervising agency shall receive primary preference. This section does not apply to Indian tribes. [2009 c 520 § 6.]

74.13.368 Performance-based contracts—Child welfare transformation design committee. ***(Expires July 1, 2015.)*** (1)(a) The child welfare transformation design committee is established, with members as provided in this subsection.

(i) The governor or the governor's designee;

(ii) Four private agencies that, as of May 18, 2009, provide child welfare services to children and families referred to them by the department. Two agencies must be headquartered in western Washington and two must be headquartered in eastern Washington. Two agencies must have an annual budget of at least one million state-contracted dollars and two must have an annual budget of less than one million state-contracted dollars;

(iii) The assistant secretary of the children's administration in the department;

(iv) Two regional administrators in the children's administration selected by the assistant secretary, one from one of the department's administrative regions one or two, and one from one of the department's administrative regions three, four, five, or six;

(v) The administrator for the division of licensed resources in the children's administration;

(vi) Two nationally recognized experts in performance-based contracts;

(vii) The attorney general or the attorney general's designee;

(viii) A representative of the collective bargaining unit that represents the largest number of employees in the children's administration;

(ix) A representative from the office of the family and children's ombudsman;

(x) Four representatives from the Indian policy advisory committee convened by the department's office of Indian policy and support services;

(xi) Two currently elected or former superior court judges with significant experience in dependency matters, selected by the superior court judge's association;

(xii) One representative from partners for our children affiliated with the University of Washington school of social work;

(xiii) A member of the Washington state racial disproportionality advisory committee;

(xiv) A foster parent; and

(xv) A parent representative who has had personal experience with the dependency system.

(b) The president of the senate and the speaker of the house of representatives shall jointly appoint the members under (a)(ii), (xiv), and (xv) of this subsection.

(c) The representative from partners for our children shall convene the initial meeting of the committee no later than June 15, 2009.

(d) The cochairs of the committee shall be the assistant secretary for the children's administration and another member selected by a majority vote of those members present at the initial meeting.

(2) The committee shall establish a transition plan containing recommendations to the legislature and the governor consistent with this section for the provision of child welfare services by supervising agencies pursuant to RCW 74.13.360.

(3) The plan shall include the following:

(a) A model or framework for performance-based contracts to be used by the department that clearly defines:

(i) The target population;

(ii) The referral and exit criteria for the services;

(iii) The child welfare services including the use of evidence-based services and practices to be provided by contractors;

(iv) The roles and responsibilities of public and private agency workers in key case decisions;

(v) Contract performance and outcomes, including those related to eliminating racial disparities in child outcomes;

(vi) That supervising agencies will provide culturally competent service;

(vii) How to measure whether each contractor has met the goals listed in RCW 74.13.360(5); and

(viii) Incentives to meet performance outcomes;

(b) A method by which the department will substantially reduce its current number of contracts for child welfare services;

(c) A method or methods by which clients will access community-based services, how private supervising agencies will engage other services or form local service networks, develop subcontracts, and share information and supervision of children;

(d) Methods to address the effects of racial disproportionality, as identified in the 2008 Racial Disproportionality Advisory Committee Report published by the Washington state institute for public policy in June 2008;

(e) Methods for inclusion of the principles and requirements of the centennial accord executed in November 2001, executed between the state of Washington and federally recognized tribes in Washington state;

(f) Methods for assuring performance-based contracts adhere to the letter and intent of the federal Indian child welfare act;

(g) Contract monitoring and evaluation procedures that will ensure that children and families are receiving timely and quality services and that contract terms are being implemented;

(h) A method or methods by which to ensure that the children's administration has sufficiently trained and experienced staff to monitor and manage performance-based contracts;

(i) A process by which to expand the capacity of supervising and other private agencies to meet the service needs of children and families in a performance-based contractual arrangement;

(j) A method or methods by which supervising and other private agencies can expand services in underserved areas of the state;

(k) The appropriate amounts and procedures for the reimbursement of supervising agencies given the proposed services restructuring;

(l) A method by which to access and enhance existing data systems to include contract performance information;

(m) A financing arrangement for the contracts that examines:

(i) The use of case rates or performance-based fee-for-service contracts that include incentive payments or payment schedules that link reimbursement to outcomes; and

(ii) Ways to reduce a contractor's financial risk that could jeopardize the solvency of the contractor, including consideration of the use of a risk-reward corridor that limits risk of loss and potential profits or the establishment of a statewide risk pool;

(n) A description of how the transition will impact the state's ability to obtain federal funding and examine options to further maximize federal funding opportunities and increased flexibility;

(o) A review of whether current administrative staffing levels in the regions should be continued when the majority of child welfare services are being provided by supervising agencies;

(p) A description of the costs of the transition, the initial start-up costs and the mechanisms to periodically assess the overall adequacy of funds and the fiscal impact of the changes, and the feasibility of the plan and the impact of the plan on department employees during the transition; and

(q) Identification of any statutory and regulatory revisions necessary to accomplish the transition.

(4)(a) The committee, with the assistance of the department, shall select two demonstration sites within which to implement chapter 520, Laws of 2009. One site must be located on the eastern side of the state. The other site must be located on the western side of the state. Neither site must be wholly located in any of the department's administrative regions.

(b) The committee shall develop two sets of performance outcomes to be included in the performance-based contracts the department enters into with supervising agencies. The first set of outcomes shall be used for those cases transferred to a supervising agency over time. The second set of outcomes shall be used for new entrants to the child welfare system.

(c) The committee shall also identify methods for ensuring that comparison of performance between supervising agencies and the existing service delivery system takes into account the variation in the characteristics of the populations being served as well as historical trends in outcomes for those populations.

(5) The committee shall determine the appropriate size of the child and family populations to be provided services under performance-based contracts with supervising agencies. The committee shall also identify the time frame within which cases will be transferred to supervising agencies. The performance-based contracts entered into with supervising agencies shall encompass the provision of child welfare services to enough children and families in each demonstration site to allow for the assessment of whether there are meaningful differences, to be defined by the committee, between the outcomes achieved in the demonstration sites and the comparison sites or populations. To ensure adequate statistical power to assess these differences, the populations served shall be large enough to provide a probability greater than seventy percent that meaningful difference will be detected and a ninety-five percent probability that observed differences are not due to chance alone.

(6) The committee shall also prepare as part of the plan a recommendation as to how to implement chapter 520, Laws of 2009 so that full implementation of chapter 520, Laws of 2009 is achieved no later than June 30, 2012.

(7) The committee shall prepare the plan to manage the delivery of child welfare services in a manner that achieves coordination of the services and programs that deliver primary prevention services.

(8) Beginning June 30, 2009, the committee shall report quarterly to the governor and the legislative children's oversight committee established in RCW 44.04.220. From June 30, 2012, until January 1, 2015, the committee need only report twice a year. The committee shall report on its progress in meeting its duties under subsections (2) and (3) of this section and on any other matters the committee or the legislative children's oversight committee or the governor deems appropriate. The portion of the plan required in subsection (6) of this section shall be due to the legislative children's oversight committee on or before June 1, 2010. The reports shall be in written form.

(9) The committee, by majority vote, may establish advisory committees as it deems necessary.

(10) All state executive branch agencies and the agencies with whom the department contracts for child welfare services shall cooperate with the committee and provide timely information as the chair or cochairs may request. Cooperation by the children's administration must include developing and scheduling training for supervising agencies to access data and information necessary to implement and monitor the contracts.

(11) It is expected that the administrative costs for the committee will be supported through private funds.

(12) Staff support for the committee shall be provided jointly by partners for our children and legislative staff.

(13) The committee is subject to chapters 42.30 (open public meetings act) and 42.52 (ethics in public service) RCW.

(14) This section expires July 1, 2015. [2009 c 520 § 8.]

Effective date—2009 c 520 § 8: "Section 8 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 18, 2009]." [2009 c 520 § 98.]

74.13.370 Performance-based contracts—Washington state institute for public policy report. (1) Based upon the recommendations of the child welfare transformation design committee, including the two sets of outcomes developed by the committee under RCW 74.13.368(4)(b), the Washington state institute for public policy is to conduct a review of measurable effects achieved by the supervising agencies and compare those measurable effects with the existing services offered by the state. The report on the measurable effects shall be provided to the governor and the legislature no later than April 1, 2015.

(2) No later than June 30, 2011, the Washington state institute for public policy shall provide the legislature and the governor an initial report on the department's conversion to the use of performance-based contracts as provided in RCW 74.13.360(1). No later than June 30, 2012, the Washington state institute for public policy shall provide the governor and the legislature with a second report on the department's conversion of its contracts to performance-based contracts.

(3) The department shall respond to the Washington institute for public policy's request for data and other information with which to complete these reports in a timely manner. [2009 c 520 § 9.]

74.13.372 Performance-based contracts—Determination of expansion of delivery of child welfare services by contractors—Governor's duty. Not later than June 1, 2015, the governor shall, based on the report by the Washington state institute for public policy, determine whether to expand chapter 520, Laws of 2009 to the remainder of the state or terminate chapter 520, Laws of 2009. The governor shall inform the legislature of his or her decision within seven days of the decision. The department shall, regardless of the decision of the governor regarding the delivery of child welfare services, continue to purchase services through the use of performance-based contracts. [2009 c 520 § 10.]

74.13.500 Disclosure of child welfare records—Factors—Exception. (1) Consistent with the provisions of chapter 42.56 RCW and applicable federal law, the secretary, or the secretary's designee, shall disclose information regarding the abuse or neglect of a child, the investigation of the abuse, neglect, or near fatality of a child, and any services related to the abuse or neglect of a child if any one of the following factors is present:

(a) The subject of the report has been charged in an accusatory instrument with committing a crime related to a report maintained by the department in its case and management information system;

(b) The investigation of the abuse or neglect of the child by the department or the provision of services by the department or a supervising agency has been publicly disclosed in a report required to be disclosed in the course of their official duties, by a law enforcement agency or official, a prosecuting attorney, any other state or local investigative agency or official, or by a judge of the superior court;

(c) There has been a prior knowing, voluntary public disclosure by an individual concerning a report of child abuse or neglect in which such individual is named as the subject of the report; or

(d) The child named in the report has died and the child's death resulted from abuse or neglect or the child was in the care of, or receiving services from the department or a supervising agency at the time of death or within twelve months before death.

(2) The secretary is not required to disclose information if the factors in subsection (1) of this section are present if he or she specifically determines the disclosure is contrary to the best interests of the child, the child's siblings, or other children in the household.

(3) Except for cases in subsection (1)(d) of this section, requests for information under this section shall specifically identify the case about which information is sought and the facts that support a determination that one of the factors specified in subsection (1) of this section is present.

(4) For the purposes of this section, "near fatality" means an act that, as certified by a physician, places the child in serious or critical condition. The secretary is under no obligation to have an act certified by a physician in order to comply with this section. [2009 c 520 § 84; 2005 c 274 § 351; 1999 c 339 § 1; 1997 c 305 § 2.]

Part headings not law—Effective date—2005 c 274: See RCW 42.56.901 and 42.56.902.

Effective date—1999 c 339: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 14, 1999]." [1999 c 339 § 2.]

Conflict with federal requirements—1997 c 305: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state." [1997 c 305 § 8.]

74.13.515 Disclosure of child welfare records—Fatalities. For purposes of RCW 74.13.500(1)(d), the secretary must make the fullest possible disclosure consistent with

chapter 42.56 RCW and applicable federal law in cases of all fatalities of children who were in the care of, or receiving services from, the department or a supervising agency at the time of their death or within the twelve months previous to their death.

If the secretary specifically determines that disclosure of the name of the deceased child is contrary to the best interests of the child's siblings or other children in the household, the secretary may remove personally identifying information.

For the purposes of this section, "personally identifying information" means the name, street address, social security number, and day of birth of the child who died and of private persons who are relatives of the child named in child welfare records. "Personally identifying information" shall not include the month or year of birth of the child who has died. Once this personally identifying information is removed, the remainder of the records pertaining to a child who has died must be released regardless of whether the remaining facts in the records are embarrassing to the unidentifiable other private parties or to identifiable public workers who handled the case. [2009 c 520 § 85; 2005 c 274 § 352; 1997 c 305 § 5.]

Part headings not law—Effective date—2005 c 274: See RCW 42.56.901 and 42.56.902.

Conflict with federal requirements—1997 c 305: See note following RCW 74.13.500.

74.13.525 Disclosure of child welfare records—Immunity from liability. The department or supervising agency, when acting in good faith, is immune from any criminal or civil liability, except as provided under RCW 42.56.550, for any action taken under RCW 74.13.500 through 74.13.520. [2009 c 520 § 86; 2005 c 274 § 353; 1997 c 305 § 7.]

Part headings not law—Effective date—2005 c 274: See RCW 42.56.901 and 42.56.902.

Conflict with federal requirements—1997 c 305: See note following RCW 74.13.500.

74.13.530 Child placement—Conflict of interest. (1) No child may be placed or remain in a specific out-of-home placement under this chapter or chapter 13.34 RCW when there is a conflict of interest on the part of any adult residing in the home in which the child is to be or has been placed. A conflict of interest exists when:

(a) There is an adult in the home who, as a result of: (i) His or her employment; and (ii) an allegation of abuse or neglect of the child, conducts or has conducted an investigation of the allegation; or

(b) The child has been, is, or is likely to be a witness in any pending cause of action against any adult in the home when the cause includes: (i) An allegation of abuse or neglect against the child or any sibling of the child; or (ii) a claim of damages resulting from wrongful interference with the parent-child relationship of the child and his or her biological or adoptive parent.

(2) For purposes of this section, "investigation" means the exercise of professional judgment in the review of allegations of abuse or neglect by: (a) Law enforcement personnel; (b) persons employed by, or under contract with, the state; (c) persons licensed to practice law and their employees; and (d) mental health professionals as defined in chapter 71.05 RCW.

(3) The prohibition set forth in subsection (1) of this section may not be waived or deferred by the department or a supervising agency under any circumstance or at the request of any person, regardless of who has made the request or the length of time of the requested placement. [2009 c 520 § 87; 2001 c 318 § 4.]

74.13.560 Educational continuity—Protocol development. The administrative regions of the department and the supervising agencies shall develop protocols with the respective school districts in their regions specifying specific strategies for communication, coordination, and collaboration regarding the status and progress of foster children placed in the region, in order to maximize the educational continuity and achievement for foster children. The protocols shall include methods to assure effective sharing of information consistent with RCW 28A.225.330. [2009 c 520 § 88; 2003 c 112 § 3.]

Findings—Intent—2003 c 112: See note following RCW 74.13.550.

74.13.590 Tasks to be performed based on available resources. The department and supervising agencies shall perform the tasks provided in RCW 74.13.550 through 74.13.580 based on available resources. [2009 c 520 § 89; 2003 c 112 § 6.]

Findings—Intent—2003 c 112: See note following RCW 74.13.550.

74.13.600 Kinship caregivers—Definition—Placement of children with kin a priority—Strategies. (1) For the purposes of this section, "kin" means persons eighteen years of age or older to whom the child is related by blood, adoption, or marriage, including marriages that have been dissolved, and means: (a) Any person denoted by the prefix "grand" or "great"; (b) sibling, whether full, half, or step; (c) uncle or aunt; (d) nephew or niece; or (e) first cousin.

(2) The department and supervising agencies shall plan, design, and implement strategies to prioritize the placement of children with willing and able kin when out-of-home placement is required.

These strategies must include at least the following:

(a) Development of standardized, statewide procedures to be used by supervising agencies when searching for kin of children prior to out-of-home placement. The procedures must include a requirement that documentation be maintained in the child's case record that identifies kin, and documentation that identifies the assessment criteria and procedures that were followed during all kin searches. The procedures must be used when a child is placed in out-of-home care under authority of chapter 13.34 RCW, when a petition is filed under RCW 13.32A.140, or when a child is placed under a voluntary placement agreement. To assist with implementation of the procedures, the department or supervising agencies shall request that the juvenile court require parents to disclose to the agencies all contact information for available and appropriate kin within two weeks of an entered order. For placements under signed voluntary agreements, the department and supervising agencies shall encourage the parents to disclose to the department and agencies all contact

information for available and appropriate kin within two weeks of the date the parent signs the voluntary placement agreement.

(b) Development of procedures for conducting active outreach efforts to identify and locate kin during all searches. The procedures must include at least the following elements:

(i) Reasonable efforts to interview known kin, friends, teachers, and other identified community members who may have knowledge of the child's kin, within sixty days of the child entering out-of-home care;

(ii) Increased use of those procedures determined by research to be the most effective methods of promoting reunification efforts, permanency planning, and placement decisions;

(iii) Contacts with kin identified through outreach efforts and interviews under this subsection as part of permanency planning activities and change of placement discussions;

(iv) Establishment of a process for ongoing contact with kin who express interest in being considered as a placement resource for the child; and

(v) A requirement that when the decision is made to not place the child with any kin, the department or supervising agency provides documentation as part of the child's individual service and safety plan that clearly identifies the rationale for the decision and corrective action or actions the kin must take to be considered as a viable placement option.

(3) Nothing in this section shall be construed to create an entitlement to services or to create judicial authority to order the provision of services to any person or family if the services are unavailable or unsuitable or the child or family is not eligible for such services. [2009 c 520 § 90; 2003 c 284 § 1.]

74.13.621 Kinship care oversight committee. ***(Expires June 30, 2011.)*** (1) Within existing resources, the department shall establish an oversight committee to monitor, guide, and report on kinship care recommendations and implementation activities. The committee shall:

(a) Draft a kinship care definition that is restricted to persons related by blood, marriage, or adoption, including marriages that have been dissolved, or for a minor defined as an "Indian child" under the federal Indian child welfare act (25 U.S.C. Sec. 1901 et seq.), the definition of "extended family member" under the federal Indian child welfare act, and a set of principles. If the committee concludes that one or more programs or services would be more efficiently and effectively delivered under a different definition of kin, it shall state what definition is needed, and identify the program or service in the report. It shall also provide evidence of how the program or service will be more efficiently and effectively delivered under the different definition. The department shall not adopt rules or policies changing the definition of kin without authorizing legislation;

(b) Monitor and provide consultation on the implementation of recommendations contained in the 2002 kinship care report, including but not limited to the recommendations relating to legal and respite care services and resources;

(c) Partner with nonprofit organizations and private sector businesses to guide a public education awareness campaign; and

(d) Assist with developing future recommendations on kinship care issues.

(2) The department shall consult with the oversight committee on its efforts to better collaborate and coordinate services to benefit kinship care families.

(3) The oversight committee must consist of a minimum of thirty percent kinship caregivers, who shall represent a diversity of kinship families. Statewide representation with geographic, ethnic, and gender diversity is required. Other members shall include representatives of the department, representatives of relevant state agencies, representatives of the private nonprofit and business sectors, child advocates, representatives of Washington state Indian tribes as defined under the federal Indian welfare act (25 U.S.C. Sec. 1901 et seq.), and representatives of the legal or judicial field. Birth parents, foster parents, and others who have an interest in these issues may also be included.

(4) To the extent funding is available, the department may reimburse nondepartmental members of the oversight committee for costs incurred in participating in the meetings of the oversight committee.

(5) The kinship care oversight committee shall update the legislature and governor annually on committee activities, with the first update due by January 1, 2006.

(6) This section expires June 30, 2011. [2009 c 564 § 954; 2005 c 439 § 1.]

Effective date—2009 c 564: See note following RCW 2.68.020.

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

74.13.640 Child fatality review—Report—Notice to the office of the family and children's ombudsman. (1) The department shall conduct a child fatality review in the event of an unexpected death of a minor in the state who is in the care of or receiving services described in chapter 74.13 RCW from the department or a supervising agency or who has been in the care of or received services described in chapter 74.13 RCW from the department or a supervising agency within one year preceding the minor's death.

(2) Upon conclusion of a child fatality review required pursuant to subsection (1) of this section, the department shall within one hundred eighty days following the fatality issue a report on the results of the review, unless an extension has been granted by the governor. Reports shall be distributed to the appropriate committees of the legislature, and the department shall create a public web site where all child fatality review reports required under this section shall be posted and maintained.

(3) The department shall develop and implement procedures to carry out the requirements of subsections (1) and (2) of this section.

(4) In the event a child fatality is the result of apparent abuse or neglect by the child's parent or caregiver, the department shall ensure that the fatality review team is comprised of individuals who had no previous involvement in the case and whose professional expertise is pertinent to the dynamics of the case.

(5) In the event of a near-fatality of a child who is in the care of or receiving services described in this chapter from

the department or who has been in the care of or received services described in this chapter from the department within one year preceding the near-fatality, the department shall promptly notify the office of the family and children's ombudsman. [2009 c 520 § 91; 2008 c 211 § 1; 2004 c 36 § 1.]

74.13.650 Foster parent critical support and retention program. A foster parent critical support and retention program is established to retain foster parents who care for sexually reactive children, physically assaultive children, or children with other high-risk behaviors, as defined in RCW 74.13.280. Services shall consist of short-term therapeutic and educational interventions to support the stability of the placement. The department shall enter into performance-based contracts with supervising agencies to provide this program. [2009 c 520 § 92; 2007 c 220 § 7; 2006 c 353 § 2.]

Findings—2006 c 353: "The legislature finds that:

(1) Foster parents are able to successfully maintain placements of sexually reactive children, physically assaultive children, or children with other high-risk behaviors when they are provided with proper training and support. Lack of support contributes to placement disruptions and multiple moves between foster homes.

(2) Young children who have experienced repeated early abuse and trauma are at high risk for behavior later in life that is sexually deviant, if left untreated. Placement with a well-trained, prepared, and supported foster family can break this cycle." [2006 c 353 § 1.]

74.13.670 Care provider immunity for allegation of failure to supervise a sexually reactive, physically assaultive, or physically aggressive youth—Conditions. (1) A care provider may not be found to have abused or neglected a child under chapter 26.44 RCW or be denied a license pursuant to chapter 74.15 RCW and RCW 74.13.031 for any allegations of failure to supervise in which:

(a) The allegations arise from the child's conduct that is substantially similar to prior behavior of the child, and:

(i) The child is a sexually reactive youth, exhibits high-risk behaviors, or is physically assaultive or physically aggressive as defined in RCW 74.13.280, and this information and the child's prior behavior was not disclosed to the care provider as required by RCW 74.13.280; and

(ii) The care provider did not know or have reason to know that the child needed supervision as a sexually reactive or physically assaultive or physically aggressive youth, or because of a documented history of high-risk behaviors, as a result of the care provider's involvement with or independent knowledge of the child or training and experience; or

(b) The child was not within the reasonable control of the care provider at the time of the incident that is the subject of the allegation, and the care provider was acting in good faith and did not know or have reason to know that reasonable control or supervision of the child was necessary to prevent harm or risk of harm to the child or other persons.

(2) Allegations of child abuse or neglect that meet the provisions of this section shall be designated as "unfounded" as defined in RCW 26.44.020. [2009 c 520 § 93; 2007 c 220 § 5.]

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

74.13.901 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. ***(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. Nothing in chapter 521, Laws of 2009 shall be construed as creating or requiring the creation of any medical assistance program, as that term is defined in RCW 74.09.010, for state registered domestic partners that is analogous to federal medical assistance programs extended to married persons. [2009 c 521 § 177.]

Chapter 74.13A RCW
ADOPTION SUPPORT

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74.13A.005 Adoption support—State policy enunciated. It is the policy of this state to enable the secretary to charge fees for certain services to adoptive parents who are able to pay for such services.

It is, however, also the policy of this state that the secretary of the department of social and health services shall be liberal in waiving, reducing, or deferring payment of any such fee to the end that adoptions shall be encouraged in cases where prospective adoptive parents lack means.

It is the policy of this state to encourage, within the limits of available funds, the adoption of certain hard to place children in order to make it possible for children living in, or likely to be placed in, foster homes or institutions to benefit from the stability and security of permanent homes in which such children can receive continuous parental care, guidance, protection, and love and to reduce the number of such children who must be placed or remain in foster homes or institutions until they become adults.

It is also the policy of this state to try, by means of the program of adoption support authorized in RCW 26.33.320 and *74.13.100 through 74.13.145, to reduce the total cost to the state of foster home and institutional care. [1985 c 7 § 133; 1971 ex.s. c 63 § 1. Formerly RCW 74.13.100.]

***Reviser's note:** RCW 74.13.100 through 74.13.145 were recodified as RCW 74.13A.005 through 74.13A.080 pursuant to 2009 c 520 § 95.

74.13A.010 Prospective adoptive parent's fee for cost of adoption services. When a child proposed for adoption is placed with a prospective adoptive parent the department may charge such parent a fee in payment or part payment of such adoptive parent's part of the cost of the adoption services rendered and to be rendered by the department.

In charging such fees the department shall treat a husband and wife as a single prospective adoptive parent.

Each such fee shall be fixed according to a sliding scale based on the ability to pay of the prospective adoptive parent or parents.

Such fee scale shall be annually fixed by the secretary after considering the recommendations of the committee designated by the secretary to advise him or her on child welfare and pursuant to the regulations to be issued by the secretary in accordance with the provisions of Title 34 RCW.

The secretary may waive, defer, or provide for payment in installments without interest of, any such fee whenever in his or her judgment payment or immediate payment would cause economic hardship to such adoptive parent or parents.

Nothing in this section shall require the payment of a fee to the state of Washington in a case in which an adoption results from independent placement or placement by a licensed child-placing or supervising agency. [2009 c 520 § 64; 1971 ex.s. c 63 § 2. Formerly RCW 74.13.103.]

74.13A.015 Adoption services—Disposition of fees—Use—Federal funds—Gifts and grants. All fees paid for adoption services pursuant to RCW 26.33.320 and 74.13A.005 through 74.13A.080 shall be credited to the general fund. Expenses incurred in connection with supporting the adoption of hard to place children shall be paid by warrants drawn against such appropriations as may be available. The secretary may for such purposes, contract with any public agency or supervising agency and/or adoptive parent and is authorized to accept funds from other sources including federal, private, and other public funding sources to carry out such purposes.

The secretary shall actively seek, where consistent with the policies and programs of the department, and shall make maximum use of, such federal funds as are or may be made available to the department for the purpose of supporting the adoption of hard to place children. The secretary may, if permitted by federal law, deposit federal funds for adoption support, aid to adoptions, or subsidized adoption in the general fund and may use such funds, subject to such limitations as may be imposed by federal or state law, to carry out the program of adoption support authorized by RCW 26.33.320 and 74.13A.005 through 74.13A.080. [2009 c 520 § 65; 1985 c 7 § 134; 1979 ex.s. c 67 § 7; 1975 c 53 § 1; 1973 c 61 § 1; 1971 ex.s. c 63 § 3. Formerly RCW 74.13.106.]

Severability—1979 ex.s. c 67: See note following RCW 19.28.351.

74.13A.020 Adoption support program administration—Rules and regulations—Disbursements from general fund, criteria—Limits. (1) The secretary shall issue rules and regulations to assist in the administration of the program of adoption support authorized by RCW 26.33.320 and 74.13A.005 through 74.13A.080.

(2) Disbursements from the appropriations available from the general fund shall be made pursuant to such rules and regulations and pursuant to agreements conforming thereto to be made by the secretary with parents for the purpose of supporting the adoption of children in, or likely to be placed in, foster homes or child caring institutions who are found by the secretary to be difficult to place in adoption because of physical or other reasons; including, but not limited to, physical or mental handicap, emotional disturbance, ethnic background, language, race, color, age, or sibling grouping.

(3) Such agreements shall meet the following criteria:

(a) The child whose adoption is to be supported pursuant to such agreement shall be or have been a child hard to place in adoption.

(b) Such agreement must relate to a child who was or is residing in a foster home or child-caring institution or a child who, in the judgment of the secretary, is both eligible for, and likely to be placed in, either a foster home or a child-caring institution.

(c) Such agreement shall provide that adoption support shall not continue beyond the time that the adopted child reaches eighteen years of age, becomes emancipated, dies, or otherwise ceases to need support. If the secretary finds that continuing dependency of such child after such child reaches eighteen years of age warrants the continuation of support pursuant to RCW 26.33.320 and 74.13A.005 through 74.13A.080 the secretary may do so, subject to all the provisions of RCW 26.33.320 and 74.13A.005 through 74.13A.080, including annual review of the amount of such support.

(d) Any prospective parent who is to be a party to such agreement shall be a person who has the character, judgment, sense of responsibility, and disposition which make him or her suitable as an adoptive parent of such child.

(4) At least six months before an adoption is finalized under chapter 26.33 RCW and *RCW 74.13.100 through 74.13.145, the department must provide to the prospective adoptive parent, in writing, information describing the limits of the adoption support program including the following information:

(a) The limits on monthly cash payments to adoptive families;

(b) The limits on the availability of children's mental health services and the funds with which to pay for these services;

(c) The process for accessing mental health services for children receiving adoption support services;

(d) The limits on the one-time cash payments to adoptive families for expenses related to their adopted children; and

(e) That payment for residential or group care is not available for adopted children under the adoption support program. [2009 c 520 § 66; 2009 c 491 § 9; 1990 c 285 § 7; 1985 c 7 § 135; 1982 c 118 § 4; 1979 ex.s. c 67 § 8; 1971 ex.s. c 63 § 4. Formerly RCW 74.13.109.]

Reviser's note: *(1) RCW 74.13.100 through 74.13.145 were recodified as RCW 74.13A.005 through 74.13A.080 pursuant to 2009 c 520 § 95.

(2) This section was amended by 2009 c 491 § 9 and by 2009 c 520 § 66, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Findings—Purpose—Severability—1990 c 285: See notes following RCW 74.04.005.

Severability—1979 ex.s. c 67: See note following RCW 19.28.351.

74.13A.025 Factors determining payments or adjustment in standards. The factors to be considered by the secretary in setting the amount of any payment or payments to be made pursuant to RCW 26.33.320 and *74.13.100 through 74.13.145 and in adjusting standards hereunder shall include: The size of the family including the adoptive child, the usual living expenses of the family, the special needs of any family member including education needs, the family income, the family resources and plan for savings, the medical and hospitalization needs of the family, the family's means of purchasing or otherwise receiving such care, and any other expenses likely to be needed by the child to be adopted. In setting the amount of any initial payment made pursuant to RCW 26.33.320 and *74.13.100 through 74.13.145, the secretary is authorized to establish maximum payment amounts that are reasonable and allow permanency planning goals related to adoption of children under RCW 13.34.145 to be achieved at the earliest possible date.

The amounts paid for the support of a child pursuant to RCW 26.33.320 and *74.13.100 through 74.13.145 may vary from family to family and from year to year. Due to changes in economic circumstances or the needs of the child such payments may be discontinued and later resumed.

Payments under RCW 26.33.320 and *74.13.100 through 74.13.145 may be continued by the secretary subject to review as provided for herein, if such parent or parents having such child in their custody establish their residence in another state or a foreign jurisdiction.

In fixing the standards to govern the amount and character of payments to be made for the support of adopted children pursuant to RCW 26.33.320 and *74.13.100 through 74.13.145 and before issuing rules and regulations to carry out the provisions of RCW 26.33.320 and *74.13.100 through 74.13.145, the secretary shall consider the comments and recommendations of the committee designated by the secretary to advise him with respect to child welfare. [1996 c 130 § 1; 1985 c 7 § 136; 1971 ex.s. c 63 § 5. Formerly RCW 74.13.112.]

***Reviser's note:** RCW 74.13.100 through 74.13.145 were recodified as RCW 74.13A.005 through 74.13A.080 pursuant to 2009 c 520 § 95.

74.13A.030 Both continuing payments and lump sum payments authorized. To carry out the program authorized by RCW 26.33.320 and *74.13.100 through 74.13.145, the secretary may make continuing payments or lump sum payments of adoption support. In lieu of continuing payments, or in addition to them, the secretary may make one or more specific lump sum payments for or on behalf of a hard to place child either to the adoptive parents or directly to other persons to assist in correcting any condition causing such child to be hard to place for adoption.

Consistent with a particular child's needs, continuing adoption support payments shall include, if necessary to facilitate or support the adoption of a special needs child, an amount sufficient to remove any reasonable financial barrier to adoption as determined by the secretary under **RCW 74.13.112.

After determination by the secretary of the amount of a payment or the initial amount of continuing payments, the prospective parent or parents who desire such support shall sign an agreement with the secretary providing for the payment, in the manner and at the time or times prescribed in regulations to be issued by the secretary subject to the provisions of RCW 26.33.320 and *74.13.100 through 74.13.145, of the amount or amounts of support so determined.

Payments shall be subject to review as provided in RCW 26.33.320 and *74.13.100 through 74.13.145. [1996 c 130 § 2; 1985 c 7 § 137; 1971 ex.s. c 63 § 6. Formerly RCW 74.13.115.]

Reviser's note: *(1) RCW 74.13.100 through 74.13.145 were recodified as RCW 74.13A.005 through 74.13A.080 pursuant to 2009 c 520 § 95.

**(2) RCW 74.13.112 was recodified as RCW 74.13A.025 pursuant to 2009 c 520 § 95.

74.13A.035 Application—1996 c 130. Chapter 130, Laws of 1996 applies to adoption support payments for eligible children whose eligibility is determined on or after July 1, 1996. Chapter 130, Laws of 1996 does not apply retroactively to current recipients of adoption support payments. [1996 c 130 § 3. Formerly RCW 74.13.116.]

74.13A.040 Review of support payments. (1) Any parent who is a party to an agreement under *RCW 74.13.100 through 74.13.145 may at any time, in writing, request, for reasons set forth in such request, a review of the amount of any payment or the level of continuing payments. The review shall begin not later than thirty days from the receipt of such request. Any adjustment may be made retroactive to the date such request was received by the secretary. If such request is not acted on within thirty days after it has been received by the secretary, such parent may invoke his rights under the hearing provisions set forth in **RCW 74.13.127.

(2) The secretary may make adjustments in payments at the time of the review, or at other times, if the secretary finds that circumstances have changed and warrant an adjustment in payments. Changes in circumstances may include, but are not limited to, variations in medical opinions, prognosis, and costs. Appropriate adjustments in payments shall be made based upon changes in the needs of the child and/or changes in the adoptive parents' income, resources, and expenses for the care of such child or other members of the family, including medical and/or hospitalization expense not otherwise covered by or subject to reimbursement from insurance or other sources of financial assistance. [2009 c 527 § 1; 1995 c 270 § 2; 1985 c 7 § 138; 1971 ex.s. c 63 § 7. Formerly RCW 74.13.118.]

Reviser's note: *(1) RCW 74.13.100 through 74.13.145 were recodified as RCW 74.13A.005 through 74.13A.080 pursuant to 2009 c 520 § 95.

**(2) RCW 74.13.127 was recodified as RCW 74.13A.055 pursuant to 2009 c 520 § 95.

Finding—1995 c 270: "The legislature finds that it is in the best interest of the people of the state of Washington to support the adoption process in a variety of ways, including easing administrative burdens on adoptive parents receiving financial support, providing finality for adoptive placements and stable homes for children, and not delaying adoptions." [1995 c 270 § 1.]

74.13A.045 Adoptive parent's financial information. So long as any adoptive parent is receiving support pursuant to RCW 26.33.320 and *74.13.100 through 74.13.145 he or she shall, upon request, file with the secretary a copy of his or her federal income tax return. Such return and any information thereon shall be marked by the secretary "confidential", shall be used by the secretary solely for the purposes of RCW 26.33.320 and *74.13.100 through 74.13.145, and shall not be revealed to any other person, institution or agency, public or private, including agencies of the United States government, other than a superior court, judge or commissioner before whom a petition for adoption of a child being supported or to be supported pursuant to RCW 26.33.320 and *74.13.100 through 74.13.145 is then pending.

In carrying on the review process authorized by RCW 26.33.320 and *74.13.100 through 74.13.145 the secretary may require the adoptive parent or parents to disclose such additional financial information, not privileged, as may enable him or her to make determinations and adjustments in support to the end that the purposes and policies of this state expressed in *RCW 74.13.100 may be carried out, provided that no adoptive parent or parents shall be obliged, by virtue of this section, to sign any agreement or other writing waiving any constitutional right or privilege nor to admit to his or her home any agent, employee, or official of any department of this state, or of the United States government.

Such information shall be marked "confidential" by the secretary, shall be used by him or her solely for the purposes of RCW 26.33.320 and *74.13.100 through 74.13.145, and shall not be revealed to any other person, institution, or agency, public or private, including agencies of the United States government other than a superior court judge or commission before whom a petition for adoption of a child being supported or to be supported pursuant to RCW 26.33.320 and *74.13.100 through 74.13.145 is then pending. [1995 c 270 § 3; 1985 c 7 § 139; 1971 ex.s. c 63 § 8. Formerly RCW 74.13.121.]

***Reviser's note:** RCW 74.13.100 through 74.13.145 were recodified as RCW 74.13A.005 through 74.13A.080 pursuant to 2009 c 520 § 95.

Finding—1995 c 270: See note following RCW 74.13A.040.

74.13A.050 Agreements as contracts within state and federal Constitutions—State's continuing obligation. An agreement for adoption support made before January 1, 1985, or pursuant to RCW 26.33.320 and 74.13A.005 through 74.13A.080, although subject to review and adjustment as provided for herein, shall, as to the standard used by the secretary in making such review or reviews and any such adjustment, constitutes a contract within the meaning of section 10, Article I of the United States Constitution and section 23, Article I of the state Constitution. For that reason once such an agreement has been made any review of and adjustment under such agreement shall as to the standards used by the secretary, be made only subject to the provisions of RCW 26.33.320 and 74.13A.005 through 74.13A.080 and such rules and regulations relating thereto as they exist on the date of the initial determination in connection with such agreement or such more generous standard or parts of such standard as may hereafter be provided for by law or regulation. Once made such an agreement shall constitute a solemn undertaking by the state of Washington with such adoptive parent or parents. The termination of the effective period of RCW 26.33.320 and 74.13A.005 through 74.13A.080 or a decision by the state or federal government to discontinue or reduce general appropriations made available for the purposes to be served by RCW 26.33.320 and 74.13A.005 through 74.13A.080, shall not affect the state's specific continuing obligations to support such adoptions, subject to such annual review and adjustment for all such agreements as have theretofore been entered into by the state.

The purpose of this section is to assure any such parent that, upon his or her consenting to assume the burdens of adopting a hard to place child, the state will not in future so act by way of general reduction of appropriations for the program authorized by RCW 26.33.320 and 74.13A.005 through 74.13A.080 or ratable reductions, to impair the trust and confidence necessarily reposed by such parent in the state as a condition of such parent taking upon himself or herself the obligations of parenthood of a difficult to place child.

Should the secretary and any such adoptive parent differ as to whether any standard or part of a standard adopted by the secretary after the date of an initial agreement, which standard or part is used by the secretary in making any review and adjustment, is more generous than the standard in effect as of the date of the initial determination with respect to such agreement such adoptive parent may invoke his or her rights, including all rights of appeal under the fair hearing provisions, available to him or her under RCW 74.13A.055. [2009 c 520 § 67; 1985 c 7 § 140; 1971 ex.s. c 63 § 9. Formerly RCW 74.13.124.]

74.13A.055 Voluntary amendments to agreements—Procedure when adoptive parties disagree. Voluntary amendments of any support agreement entered into pursuant to RCW 26.33.320 and *74.13.100 through 74.13.145 may be made at any time. In proposing any such amending action which relates to the amount or level of a payment or payments, the secretary shall, as provided in **RCW 74.13.124,

use either the standard which existed as of the date of the initial determination with respect to such agreement or any subsequent standard or parts of such standard which both parties to such agreement agree is more generous than those in effect as of the date of such initial agreement. If the parties do not agree to the level of support, the secretary shall set the level. The secretary shall give the adoptive parent or parents written notice of the determination. The adoptive parent or parents aggrieved by the secretary's determination have the right to an adjudicative proceeding. The proceeding is governed by RCW 74.08.080 and chapter 34.05 RCW, the Administrative Procedure Act. [1989 c 175 § 148; 1985 c 7 § 141; 1971 ex.s. c 63 § 10. Formerly RCW 74.13.127.]

Reviser's note: *(1) RCW 74.13.100 through 74.13.145 were recodified as RCW 74.13A.005 through 74.13A.080 pursuant to 2009 c 520 § 95.

**(2) RCW 74.13.124 was recodified as RCW 74.13A.050 pursuant to 2009 c 520 § 95.

Effective date—1989 c 175: See note following RCW 34.05.010.

74.13A.060 Nonrecurring adoption expenses. The secretary may authorize the payment, from the appropriations available from the general fund, of all or part of the nonrecurring adoption expenses incurred by a prospective parent. "Nonrecurring adoption expenses" means those expenses incurred by a prospective parent in connection with the adoption of a difficult to place child including, but not limited to, attorneys' fees, court costs, and agency fees. Payment shall be made in accordance with rules adopted by the department.

This section shall have retroactive application to January 1, 1987. For purposes of retroactive application, the secretary may provide reimbursement to any parent who adopted a difficult to place child between January 1, 1987, and one year following June 7, 1990, regardless of whether the parent had previously entered into an adoption support agreement with the department. [1990 c 285 § 8; 1985 c 7 § 142; 1979 ex.s. c 67 § 9; 1971 ex.s. c 63 § 11. Formerly RCW 74.13.130.]

Findings—Purpose—Severability—1990 c 285: See notes following RCW 74.04.005.

Severability—1979 ex.s. c 67: See note following RCW 19.28.351.

74.13A.065 Records—Confidentiality. The secretary shall keep such general records as are needed to evaluate the effectiveness of the program of adoption support authorized by RCW 26.33.320 and *74.13.100 through 74.13.145 in encouraging and effectuating the adoption of hard to place children. In so doing the secretary shall, however, maintain the confidentiality required by law with respect to particular adoptions. [1985 c 7 § 143; 1971 ex.s. c 63 § 13. Formerly RCW 74.13.133.]

***Reviser's note:** RCW 74.13.100 through 74.13.145 were recodified as RCW 74.13A.005 through 74.13A.080 pursuant to 2009 c 520 § 95.

74.13A.070 Recommendations for support of the adoption of certain children. Any supervising agency or person having a child in foster care or institutional care and wishing to recommend to the secretary support of the adoption of such child as provided for in RCW 26.33.320 and 74.13A.005 through 74.13A.080 may do so, and may include in its or his or her recommendation advice as to the appropriate level of support and any other information likely to assist the secretary in carrying out the functions vested in the secretary by RCW 26.33.320 and 74.13A.005 through 74.13A.080. Such agency may, but is not required to, be retained by the secretary to make the required preplacement study of the prospective adoptive parent or parents. [2009 c 520 § 68; 1985 c 7 § 144; 1971 ex.s. c 63 § 14. Formerly RCW 74.13.136.]

74.13A.075 "Secretary" and "department" defined. As used in RCW 26.33.320 and *74.13.100 through 74.13.145 the following definitions shall apply:

(1) "Secretary" means the secretary of the department of social and health services or his designee.

(2) "Department" means the department of social and health services. [1985 c 7 § 145; 1971 ex.s. c 63 § 15. Formerly RCW 74.13.139.]

***Reviser's note:** RCW 74.13.100 through 74.13.145 were recodified as RCW 74.13A.005 through 74.13A.080 pursuant to 2009 c 520 § 95.

74.13A.080 Short title—1971 act. RCW 26.33.320 and *74.13.100 through 74.13.145 may be known and cited as the "Adoption Support Demonstration Act of 1971". [1985 c 7 § 146; 1971 ex.s. c 63 § 17. Formerly RCW 74.13.145.]

***Reviser's note:** RCW 74.13.100 through 74.13.145 were recodified as RCW 74.13A.005 through 74.13A.080 pursuant to 2009 c 520 § 95.

74.13A.085 Adoption support reconsideration program. (1) The department of social and health services shall establish, within funds appropriated for the purpose, a reconsideration program to provide medical and counseling services through the adoption support program for children of families who apply for services after the adoption is final. Families requesting services through the program shall provide any information requested by the department for the purpose of processing the family's application for services.

(2) A child meeting the eligibility criteria for registration with the program is one who:

(a) Was residing in a preadoptive placement funded by the department or in foster care funded by the department immediately prior to the adoptive placement;

(b) Had a physical or mental handicap or emotional disturbance that existed and was documented prior to the adoption or was at high risk of future physical or mental handicap or emotional disturbance as a result of conditions exposed to prior to the adoption; and

(c) Resides in the state of Washington with an adoptive parent who lacks the necessary financial means to care for the child's special need.

(3) If a family is accepted for registration and meets the criteria in subsection (2) of this section, the department may enter into an agreement for services. Prior to entering into an agreement for services through the program, the medical needs of the child must be reviewed and approved by the department.

(4) Any services provided pursuant to an agreement between a family and the department shall be met from the department's medical program. Such services shall be limited to:

(a) Services provided after finalization of an agreement between a family and the department pursuant to this section;

(b) Services not covered by the family's insurance or other available assistance; and

(c) Services related to the eligible child's identified physical or mental handicap or emotional disturbance that existed prior to the adoption.

(5) Any payment by the department for services provided pursuant to an agreement shall be made directly to the physician or provider of services according to the department's established procedures.

(6) The total costs payable by the department for services provided pursuant to an agreement shall not exceed twenty thousand dollars per child. [1997 c 131 § 1; 1990 c 285 § 5. Formerly RCW 74.13.150.]

Findings—Purpose—Severability—1990 c 285: See notes following RCW 74.04.005.

74.13A.090 Interstate agreements for adoption of children with special needs—Findings. The legislature finds that:

(1) Finding adoptive families for children for whom state assistance under *RCW 74.13.100 through 74.13.145 is desirable and assuring the protection of the interest of the children affected during the entire assistance period require special measures when the adoptive parents move to other states or are residents of another state.

(2) Provision of medical and other necessary services for children, with state assistance, encounters special difficulties when the provision of services takes place in other states. [1997 c 31 § 1. Formerly RCW 74.13.152.]

***Reviser's note:** RCW 74.13.100 through 74.13.145 were recodified as RCW 74.13A.005 through 74.13A.080 pursuant to 2009 c 520 § 95.

74.13A.095 Interstate agreements for adoption of children with special needs—Purpose. The purposes of *RCW 74.13.152 through 74.13.159 are to:

(1) Authorize the department to enter into interstate agreements with agencies of other states for the protection of children on behalf of whom adoption assistance is being provided by the department; and

(2) Provide procedures for interstate children's adoption assistance payments, including medical payments. [1997 c 31 § 2. Formerly RCW 74.13.153.]

***Reviser's note:** RCW 74.13.152 through 74.13.159 were recodified as RCW 74.13A.090 through 74.13A.125 pursuant to 2009 c 520 § 95.

74.13A.100 Interstate agreements for adoption of children with special needs—Definitions. The definitions in this section apply throughout *RCW 74.13.152 through 74.13.159 unless the context clearly indicates otherwise.

(1) "Adoption assistance state" means the state that is signatory to an adoption assistance agreement in a particular case.

(2) "Residence state" means the state where the child is living.

(3) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, or a territory or possession of or administered by the United States. [1997 c 31 § 3. Formerly RCW 74.13.154.]

***Reviser's note:** RCW 74.13.152 through 74.13.159 were recodified as RCW 74.13A.090 through 74.13A.125 pursuant to 2009 c 520 § 95.

74.13A.105 Interstate agreements for adoption of children with special needs—Authorization. The department is authorized to develop, participate in the development of, negotiate, and enter into one or more interstate compacts on behalf of this state with other states to implement one or more of the purposes set forth in *RCW 74.13.152 through 74.13.159. When entered into, and for so long as it remains in force, such a compact has the force and effect of law. [1997 c 31 § 4. Formerly RCW 74.13.155.]

***Reviser's note:** RCW 74.13.152 through 74.13.159 were recodified as RCW 74.13A.090 through 74.13A.125 pursuant to 2009 c 520 § 95.

74.13A.110 Interstate agreements for adoption of children with special needs—Required provisions. A compact entered into pursuant to the authority conferred by *RCW 74.13.152 through 74.13.159 must have the following content:

(1) A provision making it available for joinder by all states;

(2) A provision for withdrawal from the compact upon written notice to the parties, but with a period of one year between the date of the notice and the effective date of the withdrawal;

(3) A requirement that the protections afforded by or pursuant to the compact continue in force for the duration of the adoption assistance and be applicable to all children and their adoptive parents who, on the effective date of the withdrawal, are receiving adoption assistance from a party state other than the one in which they are resident and have their principal place of abode;

(4) A requirement that each instance of adoption assistance to which the compact applies be covered by an adoption assistance agreement that is (a) in writing between the adoptive parents and the state child welfare agency of the state that undertakes to provide the adoption assistance, and (b) expressly for the benefit of the adopted child and enforceable by the adoptive parents and the state agency providing the adoption assistance; and

(5) Such other provisions as are appropriate to implement the proper administration of the compact. [1997 c 31 § 5. Formerly RCW 74.13.156.]

***Reviser's note:** RCW 74.13.152 through 74.13.159 were recodified as RCW 74.13A.090 through 74.13A.125 pursuant to 2009 c 520 § 95.

74.13A.115 Interstate agreements for adoption of children with special needs—Additional provisions. A compact entered into pursuant to the authority conferred by *RCW 74.13.152 through 74.13.159 may contain provisions in addition to those required under **RCW 74.13.156, as follows:

(1) Provisions establishing procedures and entitlement to medical and other necessary social services for the child in accordance with applicable laws, even though the child and the adoptive parents are in a state other than the one responsible for or providing the services or the funds to defray part or all of the costs of the services; and

(2) Such other provisions as are appropriate or incidental to the proper administration of the compact. [1997 c 31 § 6. Formerly RCW 74.13.157.]

Reviser's note: *(1) RCW 74.13.152 through 74.13.159 were recodified as RCW 74.13A.090 through 74.13A.125 pursuant to 2009 c 520 § 95.

**(2) RCW 74.13.156 was recodified as RCW 74.13A.110 pursuant to 2009 c 520 § 95.

74.13A.120 Interstate agreements for adoption of children with special needs—Medical assistance for children residing in this state—Penalty for fraudulent claims. (1) A child with special needs who resides in this state and is the subject of an adoption assistance agreement with another state is entitled to receive a medical assistance identification card from this state upon the filing with the department of a certified copy of the adoption assistance agreement obtained from the adoption assistance state. In accordance with regulations of the medical assistance administration, the adoptive parents are required at least annually to show that the agreement is still in force or has been renewed.

(2) The medical assistance administration shall consider the holder of a medical assistance identification under this section as any other holder of a medical assistance identification under the laws of this state and shall process and make payment on claims in the same manner and under the same conditions and procedures as for other recipients of medical assistance.

(3) The medical assistance administration shall provide coverage and benefits for a child who is in another state and is covered by an adoption assistance agreement made by the department for the coverage or benefits, if any, not provided by the residence state. Adoptive parents acting for the child may submit evidence of payment for services or benefit amounts not payable in the residence state for reimbursement. No reimbursement may be made for services or benefit amounts covered under any insurance or other third party medical contract or arrangement held by the child or the adoptive parents. The department shall adopt rules implementing this subsection. The additional coverage and benefit amounts provided under this subsection must be for services to the cost of which there is no federal contribution, or which, if federally aided, are not provided by the residence state. The rules must include procedures to be followed in obtaining prior approval for services if required for the assistance.

(4) The submission of any claim for payment or reimbursement for services or benefits under this section or the making of any statement that the person knows or should know to be false, misleading, or fraudulent is punishable as perjury under chapter 9A.72 RCW.

(5) This section applies only to medical assistance for children under adoption assistance agreements from states that have entered into a compact with this state under which the other state provided medical assistance to children with special needs under adoption assistance agreements made by this state. All other children entitled to medical assistance under an adoption assistance agreement entered into by this state are eligible to receive assistance in accordance with the applicable laws and procedures. [1997 c 31 § 7. Formerly RCW 74.13.158.]

74.13A.125 Interstate agreements for adoption of children with special needs—Adoption assistance and medical assistance in state plan. Consistent with federal law, the department, in connection with the administration of *RCW 74.13.152 through 74.13.158 and any pursuant compact shall include in any state plan made pursuant to the adoption assistance and child welfare act of 1980 (P.L. 96-272), Titles IV(e) and XIX of the social security act, and any other applicable federal laws, the provision of adoption assistance and medical assistance for which the federal government pays some or all of the cost. The department shall apply for and administer all relevant federal aid in accordance with law. [1997 c 31 § 8. Formerly RCW 74.13.159.]

***Reviser's note:** RCW 74.13.152 through 74.13.158 were recodified as RCW 74.13A.090 through 74.13A.120 pursuant to 2009 c 520 § 95.

74.13A.130 Home studies for adoption—Purchase of services from nonprofit agencies. ***(Expires June 30, 2011.)*** The secretary or the secretary's designee shall purchase services from nonprofit agencies for the purpose of conducting home studies for legally free children who have been awaiting adoption finalization for more than sixty days. The home studies selected to be done under this section shall be for the children who have been legally free and awaiting adoption finalization the longest period of time.

This section expires June 30, 2011. [2009 c 520 § 69; 1997 c 272 § 4. Formerly RCW 74.13.165.]

Effective date—1997 c 272: See note following RCW 74.13.031.

Chapter 74.14C RCW
FAMILY PRESERVATION SERVICES

Sections

74.14C.080 Repealed.

74.14C.080 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 74.15 RCW
CARE OF CHILDREN, EXPECTANT MOTHERS, DEVELOPMENTALLY DISABLED

Sections

74.15.010 Declaration of purpose.
74.15.020 Definitions.
74.15.031 Recodified as RCW 43.215.532.
74.15.050 Fire protection—Powers and duties of chief of the Washington state patrol.
74.15.100 License application, issuance, duration—Reclassification—Location changes.
74.15.902 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. *(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*

74.15.010 Declaration of purpose. The purpose of chapter 74.15 RCW and RCW 74.13.031 is:

(1) To safeguard the health, safety, and well-being of children, expectant mothers and developmentally disabled persons receiving care away from their own homes, which is paramount over the right of any person to provide care;

(2) To strengthen and encourage family unity and to sustain parental rights and responsibilities to the end that foster care is provided only when a child's family, through the use of all available resources, is unable to provide necessary care;

(3) To promote the development of a sufficient number and variety of adequate foster family homes and maternity-care facilities, both public and private, through the coopera-

tive efforts of public and supervising agencies and related groups;

(4) To provide consultation to agencies caring for children, expectant mothers or developmentally disabled persons in order to help them to improve their methods of and facilities for care;

(5) To license agencies as defined in RCW 74.15.020 and to assure the users of such agencies, their parents, the community at large and the agencies themselves that adequate minimum standards are maintained by all agencies caring for children, expectant mothers and developmentally disabled persons. [2009 c 520 § 12; 1995 c 302 § 2; 1983 c 3 § 192; 1977 ex.s. c 80 § 70; 1967 c 172 § 1.]

Intent—1995 c 302: "The legislature declares that the state of Washington has a compelling interest in protecting and promoting the health, welfare, and safety of children, including those who receive care away from their own homes. The legislature further declares that no person or agency has a right to be licensed under this chapter to provide care for children. The health, safety, and well-being of children must be the paramount concern in determining whether to issue a license to an applicant, whether to suspend or revoke a license, and whether to take other licensing action. The legislature intends, through the provisions of this act, to provide the department of social and health services with additional enforcement authority to carry out the purpose and provisions of this act. Furthermore, administrative law judges should receive specialized training so that they have the specialized expertise required to appropriately review licensing decisions of the department.

Children placed in foster care are particularly vulnerable and have a special need for placement in an environment that is stable, safe, and nurturing. For this reason, foster homes should be held to a high standard of care, and department decisions regarding denial, suspension, or revocation of foster care licenses should be upheld on review if there are reasonable grounds for such action." [1995 c 302 § 1.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

Severability—1967 c 172: "If any provision of this 1967 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1967 c 172 § 24.]

74.15.020 Definitions. For the purpose of this chapter and RCW 74.13.031, and unless otherwise clearly indicated by the context thereof, the following terms shall mean:

(1) "Agency" means any person, firm, partnership, association, corporation, or facility which receives children, expectant mothers, or persons with developmental disabilities for control, care, or maintenance outside their own homes, or which places, arranges the placement of, or assists in the placement of children, expectant mothers, or persons with developmental disabilities for foster care or placement of children for adoption, and shall include the following irrespective of whether there is compensation to the agency or to the children, expectant mothers or persons with developmental disabilities for services rendered:

(a) "Child-placing agency" means an agency which places a child or children for temporary care, continued care, or for adoption;

(b) "Community facility" means a group care facility operated for the care of juveniles committed to the department under RCW 13.40.185. A county detention facility that houses juveniles committed to the department under RCW 13.40.185 pursuant to a contract with the department is not a community facility;

(c) "Crisis residential center" means an agency which is a temporary protective residential facility operated to perform the duties specified in chapter 13.32A RCW, in the manner provided in RCW 74.13.032 through 74.13.036;

(d) "Emergency respite center" is an agency that may be commonly known as a crisis nursery, that provides emergency and crisis care for up to seventy-two hours to children who have been admitted by their parents or guardians to prevent abuse or neglect. Emergency respite centers may operate for up to twenty-four hours a day, and for up to seven days a week. Emergency respite centers may provide care for children ages birth through seventeen, and for persons eighteen through twenty with developmental disabilities who are admitted with a sibling or siblings through age seventeen. Emergency respite centers may not substitute for crisis residential centers or HOPE centers, or any other services defined under this section, and may not substitute for services which are required under chapter 13.32A or 13.34 RCW;

(e) "Foster-family home" means an agency which regularly provides care on a twenty-four hour basis to one or more children, expectant mothers, or persons with developmental disabilities in the family abode of the person or persons under whose direct care and supervision the child, expectant mother, or person with a developmental disability is placed;

(f) "Group-care facility" means an agency, other than a foster-family home, which is maintained and operated for the care of a group of children on a twenty-four hour basis;

(g) "HOPE center" means an agency licensed by the secretary to provide temporary residential placement and other services to street youth. A street youth may remain in a HOPE center for thirty days while services are arranged and permanent placement is coordinated. No street youth may stay longer than thirty days unless approved by the department and any additional days approved by the department must be based on the unavailability of a long-term placement option. A street youth whose parent wants him or her returned to home may remain in a HOPE center until his or her parent arranges return of the youth, not longer. All other street youth must have court approval under chapter 13.34 or 13.32A RCW to remain in a HOPE center up to thirty days;

(h) "Maternity service" means an agency which provides or arranges for care or services to expectant mothers, before or during confinement, or which provides care as needed to mothers and their infants after confinement;

(i) "Responsible living skills program" means an agency licensed by the secretary that provides residential and transitional living services to persons ages sixteen to eighteen who are dependent under chapter 13.34 RCW and who have been unable to live in his or her legally authorized residence and, as a result, the minor lived outdoors or in another unsafe location not intended for occupancy by the minor. Dependent minors ages fourteen and fifteen may be eligible if no other placement alternative is available and the department approves the placement;

(j) "Service provider" means the entity that operates a community facility.

(2) "Agency" shall not include the following:

(a) Persons related to the child, expectant mother, or person with developmental disability in the following ways:

(i) Any blood relative, including those of half-blood, and including first cousins, second cousins, nephews or nieces, and persons of preceding generations as denoted by prefixes of grand, great, or great-great;

(ii) Stepfather, stepmother, stepbrother, and stepsister;

(iii) A person who legally adopts a child or the child's parent as well as the natural and other legally adopted children of such persons, and other relatives of the adoptive parents in accordance with state law;

(iv) Spouses of any persons named in (i), (ii), or (iii) of this subsection (2)(a), even after the marriage is terminated;

(v) Relatives, as named in (i), (ii), (iii), or (iv) of this subsection (2)(a), of any half sibling of the child; or

(vi) Extended family members, as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent who provides care in the family abode on a twenty-four-hour basis to an Indian child as defined in 25 U.S.C. Sec. 1903(4);

(b) Persons who are legal guardians of the child, expectant mother, or persons with developmental disabilities;

(c) Persons who care for a neighbor's or friend's child or children, with or without compensation, where the parent and person providing care on a twenty-four-hour basis have agreed to the placement in writing and the state is not providing any payment for the care;

(d) A person, partnership, corporation, or other entity that provides placement or similar services to exchange students or international student exchange visitors or persons who have the care of an exchange student in their home;

(e) A person, partnership, corporation, or other entity that provides placement or similar services to international children who have entered the country by obtaining visas that meet the criteria for medical care as established by the United States citizenship and immigration services, or persons who have the care of such an international child in their home;

(f) Schools, including boarding schools, which are engaged primarily in education, operate on a definite school year schedule, follow a stated academic curriculum, accept only school-age children and do not accept custody of children;

(g) Hospitals licensed pursuant to chapter 70.41 RCW when performing functions defined in chapter 70.41 RCW, nursing homes licensed under chapter 18.51 RCW and boarding homes licensed under chapter 18.20 RCW;

(h) Licensed physicians or lawyers;

(i) Facilities approved and certified under chapter 71A.22 RCW;

(j) Any agency having been in operation in this state ten years prior to June 8, 1967, and not seeking or accepting moneys or assistance from any state or federal agency, and is supported in part by an endowment or trust fund;

(k) Persons who have a child in their home for purposes of adoption, if the child was placed in such home by a licensed child-placing agency, an authorized public or tribal agency or court or if a replacement report has been filed under chapter 26.33 RCW and the placement has been approved by the court;

(l) An agency operated by any unit of local, state, or federal government or an agency licensed by an Indian tribe pursuant to RCW 74.15.190;

(m) A maximum or medium security program for juvenile offenders operated by or under contract with the department;

(n) An agency located on a federal military reservation, except where the military authorities request that such agency be subject to the licensing requirements of this chapter.

(3) "Department" means the state department of social and health services.

(4) "Juvenile" means a person under the age of twenty-one who has been sentenced to a term of confinement under the supervision of the department under RCW 13.40.185.

(5) "Performance-based contracts" or "contracting" means the structuring of all aspects of the procurement of services around the purpose of the work to be performed and the desired results with the contract requirements set forth in clear, specific, and objective terms with measurable outcomes. Contracts may also include provisions that link the performance of the contractor to the level and timing of the reimbursement.

(6) "Probationary license" means a license issued as a disciplinary measure to an agency that has previously been issued a full license but is out of compliance with licensing standards.

(7) "Requirement" means any rule, regulation, or standard of care to be maintained by an agency.

(8) "Secretary" means the secretary of social and health services.

(9) "Street youth" means a person under the age of eighteen who lives outdoors or in another unsafe location not intended for occupancy by the minor and who is not residing with his or her parent or at his or her legally authorized residence.

(10) "Supervising agency" means an agency licensed by the state under RCW 74.15.090 or an Indian tribe under RCW 74.15.190 that has entered into a performance-based contract with the department to provide child welfare services.

(11) "Transitional living services" means at a minimum, to the extent funds are available, the following:

(a) Educational services, including basic literacy and computational skills training, either in local alternative or public high schools or in a high school equivalency program that leads to obtaining a high school equivalency degree;

(b) Assistance and counseling related to obtaining vocational training or higher education, job readiness, job search assistance, and placement programs;

(c) Counseling and instruction in life skills such as money management, home management, consumer skills, parenting, health care, access to community resources, and transportation and housing options;

(d) Individual and group counseling; and

(e) Establishing networks with federal agencies and state and local organizations such as the United States department of labor, employment and training administration programs including the workforce investment act which administers private industry councils and the job corps; vocational rehabilitation; and volunteer programs. [2009 c 520 § 13; 2007 c 412 § 1. Prior: 2006 c 265 § 401; 2006 c 90 § 1; 2006 c 54 § 7; prior: 2001 c 230 § 1; 2001 c 144 § 1; 2001 c 137 § 3; 1999 c 267 § 11; 1998 c 269 § 3; 1997 c 245 § 7; prior: 1995 c 311 § 18; 1995 c 302 § 3; 1994 c 273 § 21; 1991 c 128 § 14; 1988

c 176 § 912; 1987 c 170 § 12; 1982 c 118 § 5; 1979 c 155 § 83; 1977 ex.s. c 80 § 71; 1967 c 172 § 2.]

Part headings not law—Effective date—Severability—2006 c 265: See RCW 43.215.904 through 43.215.906.

Part headings not law—Severability—Conflict with federal requirements—Short title—2006 c 54: See RCW 41.56.911 through 41.56.914.

Findings—Intent—Severability—1999 c 267: See notes following RCW 43.20A.790.

Alphabetization—1998 c 269: See note following RCW 13.50.010.

Intent—Finding—Effective date—1998 c 269: See notes following RCW 72.05.020.

Intent—1995 c 302: See note following RCW 74.15.010.

Severability—Effective date—1991 c 128: See RCW 19.166.900 and 19.166.901.

Severability—1988 c 176: See RCW 71A.10.900.

Severability—1987 c 170: See note following RCW 13.04.030.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

74.15.031 Recodified as RCW 43.215.532. See Supplementary Table of Disposition of Former RCW Sections, this volume.

74.15.050 Fire protection—Powers and duties of chief of the Washington state patrol. The chief of the Washington state patrol, through the director of fire protection, shall have the power and it shall be his or her duty:

(1) In consultation with the children's services advisory committee and with the advice and assistance of persons representative of the various type agencies to be licensed, to adopt recognized minimum standard requirements pertaining to each category of agency established pursuant to chapter 74.15 RCW and RCW 74.13.031, except foster-family homes and child-placing agencies, necessary to protect all persons residing therein from fire hazards;

(2) To make or cause to be made such inspections and investigations of agencies, other than foster-family homes or child-placing agencies, as he or she deems necessary;

(3) To make a periodic review of requirements under RCW 74.15.030(7) and to adopt necessary changes after consultation as required in subsection (1) of this section;

(4) To issue to applicants for licenses hereunder, other than foster-family homes or child-placing agencies, who comply with the requirements, a certificate of compliance, a copy of which shall be presented to the department before a license shall be issued, except that an initial license may be issued as provided in RCW 74.15.120. [2009 c 520 § 15; 1995 c 369 § 62; 1986 c 266 § 123; 1982 c 118 § 8; 1979 c 141 § 357; 1967 c 172 § 5.]

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—1986 c 266: See note following RCW 38.52.005.

74.15.100 License application, issuance, duration—Reclassification—Location changes. Each agency or supervising agency shall make application for a license or renewal of license to the department on forms prescribed by the department. A licensed agency having foster-family homes under its supervision may make application for a license on behalf of any such foster-family home. Such a foster home license shall cease to be valid when the home is no longer under the supervision of that agency. Upon receipt of such application, the department shall either grant or deny a license within ninety days unless the application is for licensure as a foster-family home, in which case RCW 74.15.040 shall govern. A license shall be granted if the agency meets the minimum requirements set forth in chapter 74.15 RCW and RCW 74.13.031 and the departmental requirements consistent herewith, except that an initial license may be issued as provided in RCW 74.15.120. Licenses provided for in chapter 74.15 RCW and RCW 74.13.031 shall be issued for a period of three years. The licensee, however, shall advise the secretary of any material change in circumstances which might constitute grounds for reclassification of license as to category. The license issued under this chapter is not transferable and applies only to the licensee. The license shall be limited to a particular location which shall be stated on the license. For licensed foster-family homes having an acceptable history of child care, the license may remain in effect for thirty days after a move, except that this will apply only if the family remains intact. Licensees must notify their licensor before moving to a new location and may request a continuation of the license at the new location. At the request of the licensee, the department shall, within thirty days following a foster-family home licensee's move to a new location, amend the license to reflect the new location, provided the new location and the licensee meet minimum licensing standards. [2009 c 520 § 16; 2009 c 206 § 1; 2006 c 265 § 403; 1995 c 302 § 8; 1982 c 118 § 11; 1979 c 141 § 360; 1967 c 172 § 10.]

Reviser's note: This section was amended by 2009 c 206 § 1 and by 2009 c 520 § 16, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Part headings not law—Effective date—Severability—2006 c 265: See RCW 43.215.904 through 43.215.906.

Intent—1995 c 302: See note following RCW 74.15.010.

74.15.902 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. ***(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. Nothing in chapter 521, Laws of 2009 shall be construed as creating or requiring the creation of any medical assistance program, as that term is defined in RCW 74.09.010, for state registered domestic partners that is analogous to federal medical assistance programs extended to married persons. [2009 c 521 § 178.]

Chapter 74.20 RCW
SUPPORT OF DEPENDENT CHILDREN

Sections

74.20.901 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. *(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*

74.20.901 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. ***(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 179.]

Chapter 74.20A RCW
SUPPORT OF DEPENDENT CHILDREN—ALTERNATIVE METHOD—1971 ACT

Sections

74.20A.055 Notice and finding of financial responsibility of responsible parent—Service—Hearing—Decisions—Rules. *(Effective October 1, 2009.)*
74.20A.056 Notice and finding of financial responsibility pursuant to an affidavit of paternity—Procedure for contesting—Rules. *(Effective October 1, 2009.)*
74.20A.059 Modification of administrative orders establishing child support—Petition—Grounds—Procedure. *(Effective October 1, 2009.)*
74.20A.300 Medical support—Health insurance coverage required. *(Effective October 1, 2009.)*
74.20A.320 License suspension—Notice of noncompliance with a child support order—License renewal and reinstatement.
74.20A.322 License suspension—Adjudicative proceeding.
74.20A.324 License suspension—Certification of noncompliance.
74.20A.326 License suspension—Payment schedule arrangements.
74.20A.328 License suspension—Rules.
74.20A.920 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. *(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*

74.20A.055 Notice and finding of financial responsibility of responsible parent—Service—Hearing—Decisions—Rules. ***(Effective October 1, 2009.)*** (1) The secretary may, if there is no order that establishes the responsible parent's support obligation or specifically relieves the responsible parent of a support obligation or pursuant to an establishment of paternity under chapter 26.26 RCW, serve on the responsible parent or parents and custodial parent a notice and finding of financial responsibility requiring the parents to appear and show cause in an adjudicative proceeding why the finding of responsibility and/or the amount thereof is incorrect, should not be finally ordered, but should be rescinded or modified. This notice and finding shall relate to the support debt accrued and/or accruing under this chapter and/or RCW 26.16.205, including periodic payments to be made in the future. The hearing shall be held pursuant to this section, chapter 34.05 RCW, the Administrative Procedure Act, and the rules of the department. A custodian who has physical custody of a child has the same rights that a custodial parent has under this section.

(2) The notice and finding of financial responsibility shall be served in the same manner prescribed for the service of a summons in a civil action or may be served on the responsible parent by certified mail, return receipt requested. The receipt shall be prima facie evidence of service. The notice shall be served upon the debtor within sixty days from the date the state assumes responsibility for the support of the dependent child or children on whose behalf support is sought. If the notice is not served within sixty days from such date, the department shall lose the right to reimbursement of payments made after the sixty-day period and before the date of notification: PROVIDED, That if the department exercises reasonable efforts to locate the debtor and is unable to do so the entire sixty-day period is tolled until such time as the debtor can be located. The notice may be served upon the custodial parent who is the nonassistance applicant or public assistance recipient by first-class mail to the last known address. If the custodial parent is not the nonassistance applicant or public assistance recipient, service shall be in the same manner as for the responsible parent.

(3) The notice and finding of financial responsibility shall set forth the amount the department has determined the responsible parent owes, the support debt accrued and/or accruing, and periodic payments to be made in the future. The notice and finding shall also include:

(a) A statement of the name of the custodial parent and the name of the child or children for whom support is sought;

(b) A statement of the amount of periodic future support payments as to which financial responsibility is alleged;

(c) A statement that the responsible parent or custodial parent may object to all or any part of the notice and finding, and file an application for an adjudicative proceeding to show cause why the terms set forth in the notice should not be ordered;

(d) A statement that, if neither the responsible parent nor the custodial parent files in a timely fashion an application for an adjudicative proceeding, the support debt and payments stated in the notice and finding, including periodic support payments in the future, shall be assessed and determined and ordered by the department and that this debt and amounts due under the notice shall be subject to collection action;

(e) A statement that the property of the debtor, without further advance notice or hearing, will be subject to lien and foreclosure, distraint, seizure and sale, order to withhold and deliver, notice of payroll deduction or other collection action to satisfy the debt and enforce the support obligation established under the notice;

(f) A statement that either or both parents are responsible for providing health insurance for his or her child if coverage that can be extended to cover the child either through private health insurance which is accessible to the child or through coverage that is or becomes available to the parent through employment or is union-related, or for paying a monthly pay-

ment toward the premium if no such coverage is available, as provided under RCW 26.09.105.

(4) A responsible parent or custodial parent who objects to the notice and finding of financial responsibility may file an application for an adjudicative proceeding within twenty days of the date of service of the notice or thereafter as provided under this subsection.

(a) If the responsible parent or custodial parent files the application within twenty days, the office of administrative hearings shall schedule an adjudicative proceeding to hear the parent's or parents' objection and determine the support obligation for the entire period covered by the notice and finding of financial responsibility. The filing of the application stays collection action pending the entry of a final administrative order;

(b) If both the responsible parent and the custodial parent fail to file an application within twenty days, the notice and finding shall become a final administrative order. The amounts for current and future support and the support debt stated in the notice are final and subject to collection, except as provided under (c) and (d) of this subsection;

(c) If the responsible parent or custodial parent files the application more than twenty days after, but within one year of the date of service, the office of administrative hearings shall schedule an adjudicative proceeding to hear the parent's or parents' objection and determine the support obligation for the entire period covered by the notice and finding of financial responsibility. The filing of the application does not stay further collection action, pending the entry of a final administrative order, and does not affect any prior collection action;

(d) If the responsible parent or custodial parent files the application more than one year after the date of service, the office of administrative hearings shall schedule an adjudicative proceeding at which the parent who requested the late hearing must show good cause for failure to file a timely application. The filing of the application does not stay future collection action and does not affect prior collection action:

(i) If the presiding officer finds that good cause exists, the presiding officer shall proceed to hear the parent's objection to the notice and determine the support obligation;

(ii) If the presiding officer finds that good cause does not exist, the presiding officer shall treat the application as a petition for prospective modification of the amount for current and future support established under the notice and finding. In the modification proceeding, the presiding officer shall set current and future support under chapter 26.19 RCW. The petitioning parent need show neither good cause nor a substantial change of circumstances to justify modification of current and future support;

(e) If the responsible parent's support obligation was based upon imputed median net income, the grant standard, or the family need standard, the division of child support may file an application for adjudicative proceeding more than twenty days after the date of service of the notice. The office of administrative hearings shall schedule an adjudicative proceeding and provide notice of the hearing to the responsible parent and the custodial parent. The presiding officer shall determine the support obligation for the entire period covered by the notice, based upon credible evidence presented by the division of child support, the responsible parent, or the custodial parent, or may determine that the support obligation set forth in the notice is correct. The division of child support demonstrates good cause by showing that the responsible parent's support obligation was based upon imputed median net income, the grant standard, or the family need standard. The filing of the application by the division of child support does not stay further collection action, pending the entry of a final administrative order, and does not affect any prior collection action.

(f) The department shall retain and/or shall not refund support money collected more than twenty days after the date of service of the notice. Money withheld as the result of collection action shall be delivered to the department. The department shall distribute such money, as provided in published rules.

(5) If an application for an adjudicative proceeding is filed, the presiding or reviewing officer shall determine the past liability and responsibility, if any, of the alleged responsible parent and shall also determine the amount of periodic payments to be made in the future, which amount is not limited by the amount of any public assistance payment made to or for the benefit of the child. If deviating from the child support schedule in making these determinations, the presiding or reviewing officer shall apply the standards contained in the child support schedule and enter written findings of fact supporting the deviation.

(6) If either the responsible parent or the custodial parent fails to attend or participate in the hearing or other stage of an adjudicative proceeding, upon a showing of valid service, the presiding officer shall enter an order of default against each party who did not appear and may enter an administrative order declaring the support debt and payment provisions stated in the notice and finding of financial responsibility to be assessed and determined and subject to collection action. The parties who appear may enter an agreed settlement or consent order, which may be different than the terms of the department's notice. Any party who appears may choose to proceed to the hearing, after the conclusion of which the presiding officer or reviewing officer may enter an order that is different than the terms stated in the notice, if the obligation is supported by credible evidence presented by any party at the hearing.

(7) The final administrative order establishing liability and/or future periodic support payments shall be superseded upon entry of a superior court order for support to the extent the superior court order is inconsistent with the administrative order.

(8) Debts determined pursuant to this section, accrued and not paid, are subject to collection action under this chapter without further necessity of action by a presiding or reviewing officer.

(9) The department has rule-making authority to enact rules consistent with 42 U.S.C. Sec. 652(f) and 42 U.S.C. Sec. 666(a)(19) as amended by section 7307 of the deficit reduction act of 2005. Additionally, the department has rule-making authority to implement regulations required under 45 C.F.R. Parts 302, 303, 304, 305, and 308. [2009 c 476 § 7; 2007 c 143 § 8; 2002 c 199 § 5; 1997 c 58 § 940; 1996 c 21 § 1; 1991 c 367 § 46; 1990 1st ex.s. c 2 § 21; 1989 c 175 § 152; 1988 c 275 § 10; 1982 c 189 § 8; 1979 ex.s. c 171 § 12; 1973 1st ex.s. c 183 § 25.]

Effective date—2009 c 476: See note following RCW 26.09.105.

Severability—2007 c 143: See note following RCW 26.18.170.

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

Severability—Effective date—Captions not law—1991 c 367: See notes following RCW 26.09.015.

Effective dates—Severability—1990 1st ex.s. c 2: See notes following RCW 26.09.100.

Effective date—1989 c 175: See note following RCW 34.05.010.

Effective dates—Severability—1988 c 275: See notes following RCW 26.19.001.

Effective date—1982 c 189: See note following RCW 34.12.020.

Severability—1979 ex.s. c 171: See note following RCW 74.20.300.

74.20A.056 Notice and finding of financial responsibility pursuant to an affidavit of paternity—Procedure for contesting—Rules. ***(Effective October 1, 2009.)*** (1) If an alleged father has signed an affidavit acknowledging paternity which has been filed with the state registrar of vital statistics before July 1, 1997, the division of child support may serve a notice and finding of parental responsibility on him and the custodial parent. Procedures for and responsibility resulting from acknowledgments filed after July 1, 1997, are in subsections (8) and (9) of this section. Service of the notice shall be in the same manner as a summons in a civil action or by certified mail, return receipt requested, on the alleged father. The custodial parent shall be served by first-class mail to the last known address. If the custodial parent is not the nonassistance applicant or public assistance recipient, service shall be in the same manner as for the responsible parent. The notice shall have attached to it a copy of the affidavit or certification of birth record information advising of the existence of a filed affidavit, provided by the state registrar of vital statistics, and shall state that:

(a) Either or both parents are responsible for providing health insurance for their child either through private health insurance which is accessible to the child or through coverage that if coverage that can be extended to cover the child is or becomes available to the parent through employment or is union-related, or for paying a monthly payment toward the premium if no such coverage is available, as provided under RCW 26.09.105;

(b) The alleged father or custodial parent may file an application for an adjudicative proceeding at which they both will be required to appear and show cause why the amount stated in the notice as to support is incorrect and should not be ordered;

(c) An alleged father or mother, if she is also the custodial parent, may request that a blood or genetic test be administered to determine whether such test would exclude him from being a natural parent and, if not excluded, may subsequently request that the division of child support initiate an action in superior court to determine the existence of the parent-child relationship; and

(d) If neither the alleged father nor the custodial parent requests that a blood or genetic test be administered or files an application for an adjudicative proceeding, the amount of support stated in the notice and finding of parental responsibility shall become final, subject only to a subsequent determination under RCW 26.26.500 through 26.26.630 that the parent-child relationship does not exist.

(2) An alleged father or custodial parent who objects to the amount of support requested in the notice may file an application for an adjudicative proceeding up to twenty days after the date the notice was served. An application for an adjudicative proceeding may be filed within one year of service of the notice and finding of parental responsibility without the necessity for a showing of good cause or upon a showing of good cause thereafter. An adjudicative proceeding under this section shall be pursuant to RCW 74.20A.055. The only issues shall be the amount of the accrued debt, the amount of the current and future support obligation, and the reimbursement of the costs of blood or genetic tests if advanced by the department. A custodian who is not the parent of a child and who has physical custody of a child has the same notice and hearing rights that a custodial parent has under this section.

(3) If the application for an adjudicative proceeding is filed within twenty days of service of the notice, collection action shall be stayed pending a final decision by the department. If no application is filed within twenty days:

(a) The amounts in the notice shall become final and the debt created therein shall be subject to collection action; and

(b) Any amounts so collected shall neither be refunded nor returned if the alleged father is later found not to be a responsible parent.

(4) An alleged father or the mother, if she is also the custodial parent, may request that a blood or genetic test be administered at any time. The request for testing shall be in writing, or as the department may specify by rule, and served on the division of child support. If a request for testing is made, the department shall arrange for the test and, pursuant to rules adopted by the department, may advance the cost of such testing. The department shall mail a copy of the test results by certified mail, return receipt requested, to the alleged father's and mother's, if she is also the custodial parent, last known address.

(5) If the test excludes the alleged father from being a natural parent, the division of child support shall file a copy of the results with the state registrar of vital statistics and shall dismiss any pending administrative collection proceedings based upon the affidavit in issue. The state registrar of vital statistics shall remove the alleged father's name from the birth certificate and change the child's surname to be the same as the mother's maiden name as stated on the birth certificate, or any other name which the mother may select.

(6) The alleged father or mother, if she is also the custodial parent, may, within twenty days after the date of receipt of the test results, request the division of child support to initiate an action under RCW 26.26.500 through 26.26.630 to determine the existence of the parent-child relationship. If the division of child support initiates a superior court action at the request of the alleged father or mother and the decision of the court is that the alleged father is a natural parent, the parent who requested the test shall be liable for court costs incurred.

(7) If the alleged father or mother, if she is also the custodial parent, does not request the division of child support to initiate a superior court action, or fails to appear and cooperate with blood or genetic testing, the notice of parental

responsibility shall become final for all intents and purposes and may be overturned only by a subsequent superior court order entered under RCW 26.26.500 through 26.26.630.

(8)(a) Subsections (1) through (7) of this section do not apply to acknowledgments of paternity filed with the state registrar of vital statistics after July 1, 1997.

(b) If an acknowledged father has signed an acknowledgment of paternity that has been filed with the state registrar of vital statistics after July 1, 1997:

(i) The division of child support may serve a notice and finding of financial responsibility under RCW 74.20A.055 based on the acknowledgment. The division of child support shall attach a copy of the acknowledgment or certification of the birth record information advising of the existence of a filed acknowledgment of paternity to the notice;

(ii) The notice shall include a statement that the acknowledged father or any other signatory may commence a proceeding in court to rescind or challenge the acknowledgment or denial of paternity under RCW 26.26.330 and 26.26.335;

(iii) A statement that either or both parents are responsible for providing health insurance for his or her child if coverage that can be extended to cover the child is or becomes available to the parent through employment or is union-related as provided under RCW 26.09.105; and

(iv) The party commencing the action to rescind or challenge the acknowledgment or denial must serve notice on the division of child support and the office of the prosecuting attorney in the county in which the proceeding is commenced. Commencement of a proceeding to rescind or challenge the acknowledgment or denial stays the establishment of the notice and finding of financial responsibility, if the notice has not yet become a final order.

(c) If neither the acknowledged father nor the other party to the notice files an application for an adjudicative proceeding or the signatories to the acknowledgment or denial do not commence a proceeding to rescind or challenge the acknowledgment of paternity, the amount of support stated in the notice and finding of financial responsibility becomes final, subject only to a subsequent determination under RCW 26.26.500 through 26.26.630 that the parent-child relationship does not exist. The division of child support does not refund nor return any amounts collected under a notice that becomes final under this section or RCW 74.20A.055, even if a court later determines that the acknowledgment is void.

(d) An acknowledged father or other party to the notice who objects to the amount of support requested in the notice may file an application for an adjudicative proceeding up to twenty days after the date the notice was served. An application for an adjudicative proceeding may be filed within one year of service of the notice and finding of parental responsibility without the necessity for a showing of good cause or upon a showing of good cause thereafter. An adjudicative proceeding under this section shall be pursuant to RCW 74.20A.055. The only issues shall be the amount of the accrued debt and the amount of the current and future support obligation.

(i) If the application for an adjudicative proceeding is filed within twenty days of service of the notice, collection action shall be stayed pending a final decision by the department.

(ii) If the application for an adjudicative proceeding is not filed within twenty days of the service of the notice, any amounts collected under the notice shall be neither refunded nor returned if the alleged father is later found not to be a responsible parent.

(e) If neither the acknowledged father nor the custodial parent requests an adjudicative proceeding, or if no timely action is brought to rescind or challenge the acknowledgment or denial after service of the notice, the notice of financial responsibility becomes final for all intents and purposes and may be overturned only by a subsequent superior court order entered under RCW 26.26.500 through 26.26.630.

(9) Acknowledgments of paternity that are filed after July 1, 1997, are subject to requirements of chapters 26.26, the uniform parentage act, and 70.58 RCW.

(10) The department and the department of health may adopt rules to implement the requirements under this section.

(11) The department has rule-making authority to enact rules consistent with 42 U.S.C. Sec. 652(f) and 42 U.S.C. Sec. 666(a)(19) as amended by section 7307 of the deficit reduction act of 2005. Additionally, the department has rule-making authority to implement regulations required under 45 C.F.R. Parts 302, 303, 304, 305, and 308. [2009 c 476 § 8; 2007 c 143 § 9. Prior: 2002 c 302 § 707; 2002 c 199 § 6; 1997 c 58 § 941; prior: 1994 c 230 § 19; 1994 c 146 § 5; 1989 c 55 § 3.]

Effective date—2009 c 476: See note following RCW 26.09.105.

Severability—2007 c 143: See note following RCW 26.18.170.

Application—Construction—Short title—Severability—2002 c 302: See RCW 26.26.903, 26.26.911, and 26.26.912.

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

Birth certificate—Establishing paternity: RCW 70.58.080.

74.20A.059 Modification of administrative orders establishing child support—Petition—Grounds—Procedure. ***(Effective October 1, 2009.)*** (1) The department, the physical custodian, or the responsible parent may petition for a prospective modification of a final administrative order if:

(a) The administrative order has not been superseded by a superior court order; and

(b) There has been a substantial change of circumstances, except as provided under RCW 74.20A.055(4)(d).

(2) An order of child support may be modified one year or more after it has been entered without showing a substantial change of circumstances:

(a) If the order in practice works a severe economic hardship on either party or the child; or

(b) If a party requests an adjustment in an order for child support that was based on guidelines which determined the amount of support according to the child's age, and the child is no longer in the age category on which the current support amount was based; or

(c) If a child is a full-time student and reasonably expected to complete secondary school or the equivalent level of vocational or technical training before the child becomes nineteen years of age upon a finding that there is a need to extend support beyond the eighteenth birthday.

(3) An order may be modified without showing a substantial change of circumstances if the requested modification is to:

(a) Require medical support under RCW 26.09.105 for a child covered by the order; or

(b) Modify an existing order for health insurance coverage.

(4) Support orders may be adjusted once every twenty-four months based upon changes in the income of the parents without a showing of substantially changed circumstances.

(5)(a) All administrative orders entered on, before, or after September 1, 1991, may be modified based upon changes in the child support schedule established in chapter 26.19 RCW without a substantial change of circumstances. The petition may be filed based on changes in the child support schedule after twelve months has expired from the entry of the administrative order or the most recent modification order setting child support, whichever is later. However, if a party is granted relief under this provision, twenty-four months must pass before another petition for modification may be filed pursuant to subsection (4) of this section.

(b) If, pursuant to subsection (4) of this section or (a) of this subsection, the order modifies a child support obligation by more than thirty percent and the change would cause significant hardship, the change may be implemented in two equal increments, one at the time of the entry of the order and the second six months from the entry of the order. Twenty-four months must pass following the second change before a petition for modification under subsection (4) of this section may be filed.

(6) An increase in the wage or salary of the parent or custodian who is receiving the support transfer payments is not a substantial change in circumstances for purposes of modification under subsection (1)(b) of this section. An obligor's voluntary unemployment or voluntary underemployment, by itself, is not a substantial change of circumstances.

(7) The department shall file the petition and a supporting affidavit with the secretary or the secretary's designee when the department petitions for modification.

(8) The responsible parent or the physical custodian shall follow the procedures in this chapter for filing an application for an adjudicative proceeding to petition for modification.

(9) Upon the filing of a proper petition or application, the secretary or the secretary's designee shall issue an order directing each party to appear and show cause why the order should not be modified.

(10) If the presiding or reviewing officer finds a modification is appropriate, the officer shall modify the order and set current and future support under chapter 26.19 RCW. [2009 c 476 § 9; 1991 c 367 § 47.]

Effective date—2009 c 476: See note following RCW 26.09.105.

Severability—Effective date—Captions not law—1991 c 367: See notes following RCW 26.09.015.

74.20A.300 Medical support—Health insurance coverage required. ***(Effective October 1, 2009.)*** (1) Whenever a support order is entered or modified under this chapter, the department shall require either or both parents to provide medical support for any dependent child, in the nature of health insurance coverage or a monthly payment toward the premium, as provided under RCW 26.09.105.

(2) "Health insurance coverage" as used in this section does not include medical assistance provided under chapter 74.09 RCW.

(3) A parent ordered to provide health insurance coverage shall provide proof of such coverage or proof that such coverage is unavailable to the department within twenty days of the entry of the order.

(4) A parent required to provide health insurance coverage must notify the department and the other parent when coverage terminates.

(5) Every order requiring a parent to provide health insurance coverage shall be entered in compliance with *RCW 26.23.050 and be subject to direct enforcement as provided under chapter 26.18 RCW. [2009 c 476 § 6; 1994 c 230 § 22; 1989 c 416 § 6.]

***Reviser's note:** The reference to RCW 26.23.050 appears to refer to the amendments made by 1989 c 416 § 8 that were subsequently vetoed by the governor.

Effective date—2009 c 476: See note following RCW 26.09.105.

74.20A.320 License suspension—Notice of noncompliance with a child support order—License renewal and reinstatement. (1) The department may serve upon a responsible parent a notice informing the responsible parent of the department's intent to submit the parent's name to the department of licensing and any appropriate licensing entity as a licensee who is not in compliance with a child support order. The department shall attach a copy of the responsible parent's child support order to the notice. Service of the notice must be by certified mail, return receipt requested. If service by certified mail is not successful, service shall be by personal service.

(2) The notice of noncompliance must include the following information:

(a) The address and telephone number of the department's division of child support office that issued the notice;

(b) That in order to prevent the department from certifying the parent's name to the department of licensing or any other licensing entity, the parent has twenty days from receipt of the notice to contact the department and:

(i) Pay the overdue support amount in full;

(ii) Request an adjudicative proceeding as provided in RCW 74.20A.322;

(iii) Agree to a payment schedule with the department as provided in RCW 74.20A.326; or

(iv) File an action to modify the child support order with the appropriate court or administrative forum, in which case the department will stay the certification process up to six months;

(c) That failure to contact the department within twenty days of receipt of the notice will result in certification of the responsible parent's name to the department of licensing and any other appropriate licensing entity for noncompliance with a child support order. Upon receipt of the notice:

(i) The licensing entity will suspend or not renew the parent's license and the department of licensing will suspend or not renew any driver's license that the parent holds until the parent provides the department of licensing and the licensing entity with a release from the department stating that the responsible parent is in compliance with the child support order;

(ii) The department of fish and wildlife will suspend a fishing license, hunting license, occupational licenses, such as a commercial fishing license, or any other license issued under chapter 77.32 RCW that the responsible parent may possess, and suspension of a license by the department of fish and wildlife may also affect the parent's ability to obtain permits, such as special hunting permits, issued by the department. Notice from the department of licensing that a responsible parent's driver's license has been suspended shall serve as notice of the suspension of a license issued under chapter 77.32 RCW;

(d) That suspension of a license will affect insurability if the responsible parent's insurance policy excludes coverage for acts occurring after the suspension of a license;

(e) If the responsible parent subsequently comes into compliance with the child support order, the department will promptly provide the parent and the appropriate licensing entities with a release stating that the parent is in compliance with the order.

(3) When a responsible parent who is served notice under subsection (1) of this section subsequently complies with the child support order, a copy of a release stating that the responsible parent is in compliance with the order shall be transmitted by the department to the appropriate licensing entities.

(4) The department of licensing and a licensing entity may renew, reinstate, or otherwise extend a license in accordance with the licensing entity's or the department of licensing's rules after the licensing entity or the department of licensing receives a copy of the release specified in subsection (3) of this section. The department of licensing and a licensing entity may waive any applicable requirement for reissuance, renewal, or other extension if it determines that the imposition of that requirement places an undue burden on the person and that waiver of the requirement is consistent with the public interest. [2009 c 408 § 1; 1997 c 58 § 802.]

Effective dates—1997 c 58: "*(2) Sections 801 through 887, 889, and 890 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect July 1, 1997.

(3) Sections 701 through 704 of this act take effect January 1, 1998.

(4) Section 944 of this act takes effect October 1, 1998." [1997 c 58 § 1013.]

***Reviser's note:** Subsection (1) of this section was vetoed by the governor. The vetoed language is as follows:

"(1) Sections 1, 2, 101 through 110, 201 through 207, 301 through 329, 401 through 404, 501 through 506, 601, 705, 706, 888, 891 through 943, 945 through 948, and 1002 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately."

Intent—1997 c 58: "It is the intent of the legislature to provide a strong incentive for persons owing child support to make timely payments, and to cooperate with the department of social and health services to establish an appropriate schedule for the payment of any arrears. To further ensure that child support obligations are met, sections 801 through 890 of this act establish a program by which certain licenses may be suspended or not renewed if a person is one hundred eighty days or more in arrears on child support payments.

In the implementation and management of this program, it is the legislature's intent that the objective of the department of social and health services be to obtain payment in full of arrears, or where that is not possible, to enter into agreements with delinquent obligors to make timely support payments and make reasonable payments towards the arrears. The legislature intends that if the obligor refuses to cooperate in establishing a fair and reasonable payment schedule for arrears or refuses to make timely support payments, the department shall proceed with certification to a licensing entity or the department of licensing that the person is not in compliance with a child support order." [1997 c 58 § 801.]

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

74.20A.322 License suspension—Adjudicative proceeding. (1) A responsible parent may request an adjudicative proceeding upon service of the notice described in RCW 74.20A.320. The request for an adjudicative proceeding must be received by the department within twenty days of service. The request must be in writing and indicate the current mailing address and daytime phone number, if available, of the responsible parent.

(2) If a responsible parent timely requests an adjudicative proceeding, the department may not certify the name of the parent to the department of licensing or a licensing entity for noncompliance with a child support order unless the adjudicative proceeding results in a finding that the responsible parent is not in compliance with the order and has not made a good faith effort to comply.

(3) The issues that may be considered at the adjudicative proceeding are limited to whether:

(a) The person named as the responsible parent is the responsible parent;

(b) The responsible parent is required to pay child support under a child support order;

(c) The responsible parent is in compliance with the order; and

(d) The responsible parent has made a good faith effort to comply with the order.

(4) If the administrative law judge finds that the parent is not in compliance with the support order, but has made a good faith effort to comply, the administrative law judge shall formulate a payment schedule as provided in RCW 74.20A.326.

(5) The decision resulting from the adjudicative proceeding must be in writing and inform the responsible parent of his or her rights to review. The parent's copy of the decision may be sent by regular mail to the parent's most recent address of record.

(6) The proceedings under this subsection shall be conducted in accordance with the requirements of chapter 34.05 RCW, the administrative procedure act.

(7) The procedures of this section constitute the exclusive administrative remedy for contesting the establishment of noncompliance with a child support order and suspension of a license under this section, and satisfy the requirements of RCW 34.05.422.

(8) For the purposes of this section, "good faith effort to comply" is a factual determination to be made by the administrative law judge based on the responsible parent's payment history, ability to pay, and efforts to find and maintain gainful employment. [2009 c 408 § 2.]

74.20A.324 License suspension—Certification of noncompliance. (1) The department may certify to the department of licensing and any appropriate licensing entity the name of a responsible parent who is not in compliance with a child support order if:

(a) Within twenty-one days after service of a notice issued under RCW 74.20A.320, the responsible parent does not request an adjudicative proceeding or file a motion with the appropriate court or administrative forum to modify the child support obligation;

(b) An adjudicative proceeding results in a decision that the responsible parent is not in compliance with a child support order and has not made a good faith effort to comply;

(c) The court enters a judgment on a petition for judicial review that finds the responsible parent is not in compliance with a child support order and has not made a good faith effort to comply; or

(d) The responsible parent fails to comply with a payment schedule established pursuant to RCW 74.20A.326.

(2) The department shall send by regular mail a copy of any certification of noncompliance filed with the department of licensing or a licensing entity to the responsible parent at the responsible parent's most recent address of record along with information as to how the parent may get his or her license reinstated.

(3) The department of licensing and a licensing entity shall, without undue delay, notify a responsible parent certified by the department under subsection (1) of this section that the parent's driver's license or other license has been suspended because the parent's name has been certified by the department as a responsible parent who is not in compliance with a child support order. [2009 c 408 § 3.]

74.20A.326 License suspension—Payment schedule arrangements. (1) If a responsible parent contacts the department's division of child support office indicated on the notice of noncompliance within twenty days of service of the notice provided in RCW 74.20A.320 and requests arrangement of a payment schedule, the department shall stay the certification of noncompliance during negotiation of the schedule for payment of arrears up to thirty days from the date of contact by the responsible parent.

(2) In proposing or approving a written payment schedule, the department or the administrative law judge shall take into consideration the amount of the arrearages, the amount of the current support order, the earnings of the responsible parent, and the needs of all children who rely on the responsible parent for support. The department or administrative law judge shall consider the individual financial circumstances of each responsible parent in evaluating the parent's ability to pay any proposed payment schedule and shall propose a fair and reasonable payment schedule tailored to the individual financial circumstances of the responsible parent. A payment schedule may include a graduated payment plan and may require a responsible parent to engage in employment-enhancing activities to attain a satisfactory payment level.

(3) A payment schedule may be for the payment of less than current monthly support for a reasonable time and is not required to include a lump sum payment for the amount of arrears. [2009 c 408 § 4.]

74.20A.328 License suspension—Rules. The department may adopt rules to implement and enforce the requirements of RCW 74.20A.320 and 74.20A.322 through 74.20A.326. [2009 c 408 § 5.]

74.20A.920 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. ***(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 180.]

Chapter 74.32 RCW
ADVISORY COMMITTEES ON VENDOR RATES

Sections

74.32.100 Repealed.
74.32.110 Repealed.
74.32.120 Repealed.
74.32.130 Repealed.
74.32.140 Repealed.
74.32.150 Repealed.
74.32.160 Repealed.
74.32.170 Repealed.
74.32.180 Repealed.

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

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

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

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

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

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

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

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

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

Chapter 74.34 RCW
ABUSE OF VULNERABLE ADULTS

Sections

74.34.902 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. *(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*

74.34.902 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. ***(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 181.]

Chapter 74.39A RCW
LONG-TERM CARE SERVICES OPTIONS—EXPANSION

Sections

74.39A.009 Definitions.
74.39A.050 Quality improvement principles.
74.39A.055 Criminal history checks on long-term care workers.
74.39A.073 Training requirements for long-term care workers.
74.39A.075 Training requirements for individual providers caring for family members.
74.39A.085 Enforcement actions against persons not certified as home care aides and their employers.
74.39A.095 Case management services—Agency on aging oversight—Plan of care—Termination of contract—Rejection of individual provider.
74.39A.260 Department duties—Criminal background checks on individual providers.
74.39A.325 In-home personal care or respite services—Electronic timekeeping.
74.39A.326 In-home personal care or respite services to family members—Department not authorized to pay—Exceptions—Enforcement—Rules.
74.39A.330 Peer mentoring.
74.39A.340 Continuing education requirements for long-term care workers.
74.39A.350 Advanced training.

74.39A.009 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Adult family home" means a home licensed under chapter 70.128 RCW.

(2) "Adult residential care" means services provided by a boarding home that is licensed under chapter 18.20 RCW and that has a contract with the department under RCW 74.39A.020 to provide personal care services.

(3) "Assisted living services" means services provided by a boarding home that has a contract with the department under RCW 74.39A.010 to provide personal care services, intermittent nursing services, and medication administration services, and the resident is housed in a private apartment-like unit.

(4) "Boarding home" means a facility licensed under chapter 18.20 RCW.

(5) "Core competencies" means basic training topics, including but not limited to, communication skills, worker self-care, problem solving, maintaining dignity, consumer directed care, cultural sensitivity, body mechanics, fall prevention, skin and body care, long-term care worker roles and boundaries, supporting activities of daily living, and food preparation and handling.

(6) "Cost-effective care" means care provided in a setting of an individual's choice that is necessary to promote the most appropriate level of physical, mental, and psychosocial well-being consistent with client choice, in an environment that is appropriate to the care and safety needs of the individual, and such care cannot be provided at a lower cost in any other setting. But this in no way precludes an individual from choosing a different residential setting to achieve his or her desired quality of life.

(7) "Department" means the department of social and health services.

(8) "Developmental disability" has the same meaning as defined in RCW 71A.10.020.

(9) "Direct care worker" means a paid caregiver who provides direct, hands-on personal care services to persons with disabilities or the elderly requiring long-term care.

(10) "Enhanced adult residential care" means services provided by a boarding home that is licensed under chapter 18.20 RCW and that has a contract with the department under RCW 74.39A.010 to provide personal care services, intermittent nursing services, and medication administration services.

(11) "Functionally disabled person" or "person who is functionally disabled" is synonymous with chronic functionally disabled and means a person who because of a recognized chronic physical or mental condition or disease, or developmental disability, including chemical dependency, is impaired to the extent of being dependent upon others for direct care, support, supervision, or monitoring to perform activities of daily living. "Activities of daily living", in this context, means self-care abilities related to personal care such as bathing, eating, using the toilet, dressing, and transfer. Instrumental activities of daily living may also be used to assess a person's functional abilities as they are related to the mental capacity to perform activities in the home and the community such as cooking, shopping, house cleaning, doing laundry, working, and managing personal finances.

(12) "Home and community services" means adult family homes, in-home services, and other services administered or provided by contract by the department directly or through contract with area agencies on aging or similar services provided by facilities and agencies licensed by the department.

(13) "Home care aide" means a long-term care worker who has obtained certification as a home care aide by the department of health.

(14) "Individual provider" is defined according to RCW 74.39A.240.

(15) "Long-term care" is synonymous with chronic care and means care and supports delivered indefinitely, intermit-

tently, or over a sustained time to persons of any age disabled by chronic mental or physical illness, disease, chemical dependency, or a medical condition that is permanent, not reversible or curable, or is long-lasting and severely limits their mental or physical capacity for self-care. The use of this definition is not intended to expand the scope of services, care, or assistance by any individuals, groups, residential care settings, or professions unless otherwise expressed by law.

(16)(a) "Long-term care workers for the elderly or persons with disabilities" or "long-term care workers" includes all persons who are long-term care workers for the elderly or persons with disabilities, including but not limited to individual providers of home care services, direct care employees of home care agencies, providers of home care services to persons with developmental disabilities under Title 71 RCW, all direct care workers in state-licensed boarding homes, assisted living facilities, and adult family homes, respite care providers, community residential service providers, and any other direct care worker providing home or community-based services to the elderly or persons with functional disabilities or developmental disabilities.

(b) "Long-term care workers" do not include: (i) Persons employed by the following facilities or agencies: Nursing homes subject to chapter 18.51 RCW, hospitals or other acute care settings, residential habilitation centers under chapter 71A.20 RCW, facilities certified under 42 C.F.R., Part 483, hospice agencies subject to chapter 70.127 RCW, adult day care centers, and adult day health care centers; or (ii) persons who are not paid by the state or by a private agency or facility licensed by the state to provide personal care services.

(17) "Nursing home" means a facility licensed under chapter 18.51 RCW.

(18) "Personal care services" means physical or verbal assistance with activities of daily living and instrumental activities of daily living provided because of a person's functional disability.

(19) "Population specific competencies" means basic training topics unique to the care needs of the population the long-term care worker is serving, including but not limited to, mental health, dementia, developmental disabilities, young adults with physical disabilities, and older adults.

(20) "Qualified instructor" means a registered nurse or other person with specific knowledge, training, and work experience in the provision of direct, hands-on personal care and other assistance services to the elderly or persons with disabilities requiring long-term care.

(21) "Secretary" means the secretary of social and health services.

(22) "Secretary of health" means the secretary of health or the secretary's designee.

(23) "Training partnership" means a joint partnership or trust that includes the office of the governor and the exclusive bargaining representative of individual providers under RCW 74.39A.270 with the capacity to provide training, peer mentoring, and workforce development, or other services to individual providers.

(24) "Tribally licensed boarding home" means a boarding home licensed by a federally recognized Indian tribe which home provides services similar to boarding homes licensed under chapter 18.20 RCW. [2009 c 580 § 1; 2009 c 2 § 2 (Initiative Measure No. 1029, approved November 4, 2008); 2007 c 361 § 2; 2004 c 142 § 14; 1997 c 392 § 103.]

Intent—Findings—Construction—Severability—Short title—2009 c 2 (Initiative Measure No. 1029): See notes following RCW 18.88B.020.

Construction—2007 c 361: "The provisions of this act are to be liberally construed to effectuate the intent, policies, and purposes of this act." [2007 c 361 § 11.]

Severability—2007 c 361: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2007 c 361 § 12.]

Captions not law—2007 c 361: "Captions used in this act are not any part of the law." [2007 c 361 § 15.]

Short title—2007 c 361: "This act may be known and cited as the establishing quality in long-term care services act." [2007 c 361 § 16.]

Effective dates—2004 c 142: See note following RCW 18.20.020.

Short title—1997 c 392: "This act shall be known and may be cited as the Clara act." [1997 c 392 § 101.]

Findings—1997 c 392: "The legislature finds and declares that the state's current fragmented categorical system for administering services to persons with disabilities and the elderly is not client and family-centered and has created significant organizational barriers to providing high quality, safe, and effective care and support. The present fragmented system results in uncoordinated enforcement of regulations designed to protect the health and safety of disabled persons, lacks accountability due to the absence of management information systems' client tracking data, and perpetuates difficulty in matching client needs and services to multiple categorical funding sources.

The legislature further finds that Washington's chronically functionally disabled population of all ages is growing at a rapid pace due to a population of the very old and increased incidence of disability due in large measure to technological improvements in acute care causing people to live longer. Further, to meet the significant and growing long-term care needs into the near future, rapid, fundamental changes must take place in the way we finance, organize, and provide long-term care services to the chronically functionally disabled.

The legislature further finds that the public demands that long-term care services be safe, client and family-centered, and designed to encourage individual dignity, autonomy, and development of the fullest human potential at home or in other residential settings, whenever practicable." [1997 c 392 § 102.]

Construction—Conflict with federal requirements—1997 c 392: "Any section or provision of this act that may be susceptible to more than one construction shall be interpreted in favor of the construction most likely to comply with federal laws entitling this state to receive federal funds for the various programs of the department of health or the department of social and health services. If any section of this act is found to be in conflict with federal requirements that are a prescribed condition of the allocation of federal funds to the state, or to any departments or agencies thereof, the conflicting part is declared to be inoperative solely to the extent of the conflict. The rules issued under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state." [1997 c 392 § 504.]

Part headings and captions not law—1997 c 392: "Part headings and captions used in this act are not part of the law." [1997 c 392 § 531.]

74.39A.050 Quality improvement principles. The department's system of quality improvement for long-term care services shall use the following principles, consistent with applicable federal laws and regulations:

(1) The system shall be client-centered and promote privacy, independence, dignity, choice, and a home or homelike environment for consumers consistent with chapter 392, Laws of 1997.

(2) The goal of the system is continuous quality improvement with the focus on consumer satisfaction and outcomes for consumers. This includes that when conducting licensing or contract inspections, the department shall inter-

view an appropriate percentage of residents, family members, resident case managers, and advocates in addition to interviewing providers and staff.

(3) Providers should be supported in their efforts to improve quality and address identified problems initially through training, consultation, technical assistance, and case management.

(4) The emphasis should be on problem prevention both in monitoring and in screening potential providers of service.

(5) Monitoring should be outcome based and responsive to consumer complaints and based on a clear set of health, quality of care, and safety standards that are easily understandable and have been made available to providers, residents, and other interested parties.

(6) Prompt and specific enforcement remedies shall also be implemented without delay, pursuant to RCW 74.39A.080, RCW 70.128.160, chapter 18.51 RCW, or chapter 74.42 RCW, for providers found to have delivered care or failed to deliver care resulting in problems that are serious, recurring, or uncorrected, or that create a hazard that is causing or likely to cause death or serious harm to one or more residents. These enforcement remedies may also include, when appropriate, reasonable conditions on a contract or license. In the selection of remedies, the safety, health, and well-being of residents shall be of paramount importance.

(7) All long-term care workers shall be screened through background checks in a uniform and timely manner to ensure that they do not have a criminal history that would disqualify them from working with vulnerable persons. Long-term care workers who are hired after January 1, 2012, are subject to background checks under RCW 74.39A.055. This information will be shared with the department of health in accordance with RCW 74.39A.055 to advance the purposes of chapter 2, Laws of 2009.

(8) No provider, or its staff, or long-term care worker, or prospective provider or long-term care worker, with a stipulated finding of fact, conclusion of law, an agreed order, or finding of fact, conclusion of law, or final order issued by a disciplining authority, a court of law, or entered into a state registry finding him or her guilty of abuse, neglect, exploitation, or abandonment of a minor or a vulnerable adult as defined in chapter 74.34 RCW shall be employed in the care of and have unsupervised access to vulnerable adults.

(9) The department shall establish, by rule, a state registry which contains identifying information about long-term care workers identified under this chapter who have substantiated findings of abuse, neglect, financial exploitation, or abandonment of a vulnerable adult as defined in RCW 74.34.020. The rule must include disclosure, disposition of findings, notification, findings of fact, appeal rights, and fair hearing requirements. The department shall disclose, upon request, substantiated findings of abuse, neglect, financial exploitation, or abandonment to any person so requesting this information. This information will also be shared with the department of health to advance the purposes of chapter 2, Laws of 2009.

(10) Until December 31, 2010, individual providers and home care agency providers must satisfactorily complete department-approved orientation, basic training, and continuing education within the time period specified by the department in rule. The department shall adopt rules by March 1, 2002, for the implementation of this section. The department shall deny payment to an individual provider or a home care provider who does not complete the training requirements within the time limit specified by the department by rule.

(11) Until December 31, 2010, in an effort to improve access to training and education and reduce costs, especially for rural communities, the coordinated system of long-term care training and education must include the use of innovative types of learning strategies such as internet resources, videotapes, and distance learning using satellite technology coordinated through community colleges or other entities, as defined by the department.

(12) The department shall create an approval system by March 1, 2002, for those seeking to conduct department-approved training.

(13) The department shall establish, by rule, background checks and other quality assurance requirements for long-term care workers who provide in-home services funded by medicaid personal care as described in RCW 74.09.520, community options program entry system waiver services as described in RCW 74.39A.030, or chore services as described in RCW 74.39A.110 that are equivalent to requirements for individual providers. Long-term care workers who are hired after January 1, 2012, are subject to background checks under RCW 74.39A.055.

(14) Under existing funds the department shall establish internally a quality improvement standards committee to monitor the development of standards and to suggest modifications.

(15) Within existing funds, the department shall design, develop, and implement a long-term care training program that is flexible, relevant, and qualifies towards the requirements for a nursing assistant certificate as established under chapter 18.88A RCW. This subsection does not require completion of the nursing assistant certificate training program by providers or their staff. The long-term care teaching curriculum must consist of a fundamental module, or modules, and a range of other available relevant training modules that provide the caregiver with appropriate options that assist in meeting the resident's care needs. Some of the training modules may include, but are not limited to, specific training on the special care needs of persons with developmental disabilities, dementia, mental illness, and the care needs of the elderly. No less than one training module must be dedicated to workplace violence prevention. The nursing care quality assurance commission shall work together with the department to develop the curriculum modules. The nursing care quality assurance commission shall direct the nursing assistant training programs to accept some or all of the skills and competencies from the curriculum modules towards meeting the requirements for a nursing assistant certificate as defined in chapter 18.88A RCW. A process may be developed to test persons completing modules from a caregiver's class to verify that they have the transferable skills and competencies for entry into a nursing assistant training program. The department may review whether facilities can develop their own related long-term care training programs. The department may develop a review process for determining what previous experience and training may be used to waive some or all of the mandatory training. The department of social and health services and the nursing care quality assurance commission

shall work together to develop an implementation plan by December 12, 1998. [2009 c 580 § 7; 2009 c 2 § 14 (Initiative Measure No. 1029, approved November 4, 2008); 2004 c 140 § 6; 2000 c 121 § 10; 1999 c 336 § 5; 1998 c 85 § 1; 1997 c 392 § 209; 1995 1st sp.s. c 18 § 12.]

Intent—Findings—Construction—Severability—Short title—2009 c 2 (Initiative Measure No. 1029): See notes following RCW 18.88B.020.

Finding—Intent—1999 c 336: See note following RCW 74.39.007.

Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392: See notes following RCW 74.39A.009.

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

74.39A.055 Criminal history checks on long-term care workers. (1) All long-term care workers for the elderly or persons with disabilities hired after January 1, 2012, shall be screened through state and federal background checks in a uniform and timely manner to ensure that they do not have a criminal history that would disqualify them from working with vulnerable persons. These background checks shall include checking against the federal bureau of investigation fingerprint identification records system and against the national sex offenders registry or their successor programs. The department shall require these long-term care workers to submit fingerprints for the purpose of investigating conviction records through both the Washington state patrol and the federal bureau of investigation.

(2) To allow the department of health to satisfy its certification responsibilities under chapter 18.88B RCW, the department shall share state and federal background check results with the department of health. Neither department may share the federal background check results with any other state agency or person.

(3) The department shall not pass on the cost of these criminal background checks to the workers or their employers.

(4) The department shall adopt rules to implement the provisions of this section by August 1, 2010. [2009 c 580 § 2; 2009 c 2 § 3 (Initiative Measure No. 1029, approved November 4, 2008).]

Intent—Findings—Construction—Severability—Short title—2009 c 2 (Initiative Measure No. 1029): See notes following RCW 18.88B.020.

74.39A.073 Training requirements for long-term care workers. (1) Effective January 1, 2011, except as provided in RCW 18.88B.040, all persons employed as long-term care workers for the elderly or persons with disabilities must meet the minimum training requirements in this section within one hundred twenty calendar days of employment.

(2) All persons employed as long-term care workers must obtain seventy-five hours of entry-level training approved by the department. A long-term care worker must accomplish five of these seventy-five hours before becoming eligible to provide care.

(3) Training required by subsection (4)(c) of this section will be applied towards training required under RCW 18.20.270 or 70.128.230 as well as any statutory or regulatory training requirements for long-term care workers employed by supportive living providers.

(4) Only training curriculum approved by the department may be used to fulfill the training requirements specified in this section. The seventy-five hours of entry-level training required shall be as follows:

(a) Before a long-term care worker is eligible to provide care, he or she must complete two hours of orientation training regarding his or her role as caregiver and the applicable terms of employment;

(b) Before a long-term care worker is eligible to provide care, he or she must complete three hours of safety training, including basic safety precautions, emergency procedures, and infection control; and

(c) All long-term care workers must complete seventy hours of long-term care basic training, including training related to core competencies and population specific competencies.

(5) The department shall only approve training curriculum that:

(a) Has been developed with input from consumer and worker representatives; and

(b) Requires comprehensive instruction by qualified instructors on the competencies and training topics in this section.

(6) Individual providers under RCW 74.39A.270 shall be compensated for training time required by this section.

(7) The department of health shall adopt rules by August 1, 2010, to implement subsections (1), (2), and (3) of this section.

(8) The department shall adopt rules by August 1, 2010, to implement subsections (4) and (5) of this section. [2009 c 580 § 10; 2009 c 2 § 5 (Initiative Measure No. 1029, approved November 4, 2008).]

Intent—Findings—Construction—Severability—Short title—2009 c 2 (Initiative Measure No. 1029): See notes following RCW 18.88B.020.

Continuing education requirements for long-term care workers: RCW 74.39A.340.

74.39A.075 Training requirements for individual providers caring for family members. (1) Effective January 1, 2011, a biological, step, or adoptive parent who is the individual provider only for his or her developmentally disabled son or daughter must receive twelve hours of training relevant to the needs of adults with developmental disabilities within the first one hundred twenty days of becoming an individual provider.

(2) Effective January 1, 2011, individual providers identified in (a) and (b) of this subsection must complete thirty-five hours of training within the first one hundred twenty days of becoming an individual provider. Five of the thirty-five hours must be completed before becoming eligible to provide care. Two of these five hours shall be devoted to an orientation training regarding an individual provider's role as caregiver and the applicable terms of employment, and three hours shall be devoted to safety training, including basic safety precautions, emergency procedures, and infection control. Individual providers subject to this requirement include:

(a) An individual provider caring only for his or her biological, step, or adoptive child or parent unless covered by subsection (1) of this section; and

(b) Before January 1, 2014, a person hired as an individual provider who provides twenty hours or less of care for one person in any calendar month.

(3) Only training curriculum approved by the department may be used to fulfill the training requirements specified in this section. The department shall only approve training curriculum that:

(a) Has been developed with input from consumer and worker representatives; and

(b) Requires comprehensive instruction by qualified instructors.

(4) The department shall adopt rules by August 1, 2010, to implement this section. [2009 c 580 § 11; 2009 c 2 § 8 (Initiative Measure No. 1029, approved November 4, 2008).]

Intent—Findings—Construction—Severability—Short title—2009 c 2 (Initiative Measure No. 1029): See notes following RCW 18.88B.020.

74.39A.085 Enforcement actions against persons not certified as home care aides and their employers. (1) The department shall deny payment to any individual provider of home care services who has not been certified by the department of health as a home care aide as required under chapter 2, Laws of 2009 or, if exempted from certification by RCW 18.88B.040, has not completed his or her required training pursuant to chapter 2, Laws of 2009.

(2) The department may terminate the contract of any individual provider of home care services, or take any other enforcement measure deemed appropriate by the department if the individual provider's certification is revoked under chapter 2, Laws of 2009 or, if exempted from certification by RCW 18.88B.040, has not completed his or her required training pursuant to chapter 2, Laws of 2009.

(3) The department shall take appropriate enforcement action related to the contract of a private agency or facility licensed by the state, to provide personal care services, other than an individual provider, who knowingly employs a long-term care worker who is not a certified home care aide as required under chapter 2, Laws of 2009 or, if exempted from certification by RCW 18.88B.040, has not completed his or her required training pursuant to chapter 2, Laws of 2009.

(4) Chapter 34.05 RCW shall govern actions by the department under this section.

(5) The department shall adopt rules by August 1, 2010, to implement this section. [2009 c 580 § 14; 2009 c 2 § 12 (Initiative Measure No. 1029, approved November 4, 2008).]

Intent—Findings—Construction—Severability—Short title—2009 c 2 (Initiative Measure No. 1029): See notes following RCW 18.88B.020.

Disciplinary action—Uncertified practice: RCW 18.88B.050.

74.39A.095 Case management services—Agency on aging oversight—Plan of care—Termination of contract—Rejection of individual provider. (1) In carrying out case management responsibilities established under RCW 74.39A.090 for consumers who are receiving services under the medicaid personal care, community options programs entry system or chore services program through an individual provider, each area agency on aging shall provide oversight of the care being provided to consumers receiving services under this section to the extent of available funding. Case management responsibilities incorporate this oversight, and include, but are not limited to:

(a) Verification that any individual provider who has not been referred to a consumer by the authority has met any training requirements established by the department;

(b) Verification of a sample of worker time sheets;

(c) Monitoring the consumer's plan of care to verify that it adequately meets the needs of the consumer, through activities such as home visits, telephone contacts, and responses to information received by the area agency on aging indicating that a consumer may be experiencing problems relating to his or her home care;

(d) Reassessing and reauthorizing services;

(e) Monitoring of individual provider performance. If, in the course of its case management activities, the area agency on aging identifies concerns regarding the care being provided by an individual provider who was referred by the authority, the area agency on aging must notify the authority regarding its concerns; and

(f) Conducting criminal background checks or verifying that criminal background checks have been conducted for any individual provider who has not been referred to a consumer by the authority. Individual providers who are hired after January 1, 2012, are subject to background checks under RCW 74.39A.055.

(2) The area agency on aging case manager shall work with each consumer to develop a plan of care under this section that identifies and ensures coordination of health and long-term care services that meet the consumer's needs. In developing the plan, they shall utilize, and modify as needed, any comprehensive community service plan developed by the department as provided in RCW 74.39A.040. The plan of care shall include, at a minimum:

(a) The name and telephone number of the consumer's area agency on aging case manager, and a statement as to how the case manager can be contacted about any concerns related to the consumer's well-being or the adequacy of care provided;

(b) The name and telephone numbers of the consumer's primary health care provider, and other health or long-term care providers with whom the consumer has frequent contacts;

(c) A clear description of the roles and responsibilities of the area agency on aging case manager and the consumer receiving services under this section;

(d) The duties and tasks to be performed by the area agency on aging case manager and the consumer receiving services under this section;

(e) The type of in-home services authorized, and the number of hours of services to be provided;

(f) The terms of compensation of the individual provider;

(g) A statement by the individual provider that he or she has the ability and willingness to carry out his or her responsibilities relative to the plan of care; and

(h)(i) Except as provided in (h)(ii) of this subsection, a clear statement indicating that a consumer receiving services under this section has the right to waive any of the case management services offered by the area agency on aging under this section, and a clear indication of whether the consumer has, in fact, waived any of these services.

(ii) The consumer's right to waive case management services does not include the right to waive reassessment or

reauthorization of services, or verification that services are being provided in accordance with the plan of care.

(3) Each area agency on aging shall retain a record of each waiver of services included in a plan of care under this section.

(4) Each consumer has the right to direct and participate in the development of their plan of care to the maximum practicable extent of their abilities and desires, and to be provided with the time and support necessary to facilitate that participation.

(5) A copy of the plan of care must be distributed to the consumer's primary care provider, individual provider, and other relevant providers with whom the consumer has frequent contact, as authorized by the consumer.

(6) The consumer's plan of care shall be an attachment to the contract between the department, or their designee, and the individual provider.

(7) If the department or area agency on aging case manager finds that an individual provider's inadequate performance or inability to deliver quality care is jeopardizing the health, safety, or well-being of a consumer receiving service under this section, the department or the area agency on aging may take action to terminate the contract between the department and the individual provider. If the department or the area agency on aging has a reasonable, good faith belief that the health, safety, or well-being of a consumer is in imminent jeopardy, the department or area agency on aging may summarily suspend the contract pending a fair hearing. The consumer may request a fair hearing to contest the planned action of the case manager, as provided in chapter 34.05 RCW. When the department or area agency on aging terminates or summarily suspends a contract under this subsection, it must provide oral and written notice of the action taken to the authority. The department may by rule adopt guidelines for implementing this subsection.

(8) The department or area agency on aging may reject a request by a consumer receiving services under this section to have a family member or other person serve as his or her individual provider if the case manager has a reasonable, good faith belief that the family member or other person will be unable to appropriately meet the care needs of the consumer. The consumer may request a fair hearing to contest the decision of the case manager, as provided in chapter 34.05 RCW. The department may by rule adopt guidelines for implementing this subsection. [2009 c 580 § 8; 2004 c 141 § 1; 2002 c 3 § 11 (Initiative Measure No. 775, approved November 6, 2001); 2000 c 87 § 5; 1999 c 175 § 3.]

Findings—Captions not law—Severability—2002 c 3 (Initiative Measure No. 775): See RCW 74.39A.220 and notes following.

Findings—1999 c 175: See note following RCW 74.39A.090.

74.39A.260 Department duties—Criminal background checks on individual providers. The department must perform criminal background checks for individual providers and prospective individual providers and ensure that the authority has ready access to any long-term care abuse and neglect registry used by the department. Individual providers who are hired after January 1, 2012, are subject to background checks under RCW 74.39A.055. [2009 c 580 § 9; 2002 c 3 § 5 (Initiative Measure No. 775, approved November 6, 2001).]

Findings—Captions not law—Severability—2002 c 3 (Initiative Measure No. 775): See RCW 74.39A.220 and notes following.

74.39A.325 In-home personal care or respite services—Electronic timekeeping. (1) Beginning July 1, 2010, the department shall not pay a home care agency licensed under chapter 70.127 RCW for in-home personal care or respite services provided under this chapter, Title 71A RCW, or chapter 74.39 RCW if the home care agency does not verify agency employee hours by electronic timekeeping.

(2) For purposes of this section, "electronic timekeeping" means an electronic, verifiable method of recording an employee's presence in the client's home at the beginning and end of the employee's client visit workday. [2009 c 571 § 2.]

Conflict with federal requirements—2009 c 571: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state." [2009 c 571 § 3.]

Effective date—2009 c 571: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 19, 2009]." [2009 c 571 § 4.]

74.39A.326 In-home personal care or respite services to family members—Department not authorized to pay—Exceptions—Enforcement—Rules. (1)(a) The department shall not pay a home care agency licensed under chapter 70.127 RCW for in-home personal care or respite services provided under this chapter, Title 71A RCW, or chapter 74.39 RCW if the care is provided to a client by a family member of the client. To the extent permitted under federal law, the provisions of this subsection shall not apply if the family member providing care is older than the client.

(b) The department may, on a case-by-case basis based on the client's health and safety, make exceptions to (a) of this subsection to authorize payment or to provide for payment during a transition period of up to three months.

(2) The department shall take appropriate enforcement action against a home care agency found to have charged the state for hours of service for which the department is not authorized to pay under this section, including requiring recoupment of any payment made for those hours and, under criteria adopted by the department by rule, terminating the contract of an agency that violates a recoupment requirement.

(3) For purposes of this section:

(a) "Client" means a person who has been deemed eligible by the department to receive in-home personal care or respite services.

(b) "Family member" shall be liberally construed to include, but not be limited to, a parent, child, sibling, aunt, uncle, cousin, grandparent, grandchild, grandniece, or grandnephew, or such relatives when related by marriage.

(4) The department shall adopt rules to implement this section. The rules shall not result in affecting the amount, duration, or scope of the personal care or respite services benefit to which a client may be entitled pursuant to RCW

74.09.520 or Title XIX of the federal social security act. [2009 c 571 § 1.]

Conflict with federal requirements—Effective date—2009 c 571: See notes following RCW 74.39A.325.

74.39A.330 Peer mentoring. Long-term care workers shall be offered on-the-job training or peer mentorship for at least one hour per week in the first ninety days of work from a long-term care worker who has completed at least twelve hours of mentor training and is mentoring no more than ten other workers at any given time. This requirement applies to long-term care workers who begin work on or after July 1, 2011. [2009 c 478 § 1; 2007 c 361 § 3.]

Construction—Severability—Captions not law—Short title—2007 c 361: See notes following RCW 74.39A.009.

74.39A.340 Continuing education requirements for long-term care workers. (1) The department of health shall ensure that all long-term care workers shall complete twelve hours of continuing education training in advanced training topics each year. This requirement applies beginning on July 1, 2011.

(2) Completion of continuing education as required in this section is a prerequisite to maintaining home care aide certification under chapter 2, Laws of 2009.

(3) Unless voluntarily certified as a home care aide under chapter 2, Laws of 2009, subsection (1) of this section does not apply to:

(a) An individual provider caring only for his or her biological, step, or adoptive child; and

(b) Before June 30, 2014, a person hired as an individual provider who provides twenty hours or less of care for one person in any calendar month.

(4) Only training curriculum approved by the department may be used to fulfill the training requirements specified in this section. The department shall only approve training curriculum that:

(a) Has been developed with input from consumer and worker representatives; and

(b) Requires comprehensive instruction by qualified instructors.

(5) Individual providers under RCW 74.39A.270 shall be compensated for training time required by this section.

(6) The department of health shall adopt rules by August 1, 2010, to implement subsections (1), (2), and (3) of this section.

(7) The department shall adopt rules by August 1, 2010, to implement subsection (4) of this section. [2009 c 580 § 12; 2009 c 2 § 9 (Initiative Measure No. 1029, approved November 4, 2008); 2007 c 361 § 4.]

Intent—Findings—Construction—Severability—Short title—2009 c 2 (Initiative Measure No. 1029): See notes following RCW 18.88B.020.

Construction—Severability—Captions not law—Short title—2007 c 361: See notes following RCW 74.39A.009.

74.39A.350 Advanced training. The department shall offer, directly or through contract, training opportunities sufficient for a long-term care worker to accumulate seventy hours of training within a reasonable time period. For individual providers represented by an exclusive bargaining representative under RCW 74.39A.270, the training opportunities shall be offered through the training partnership established under RCW 74.39A.360. Training topics shall include, but are not limited to: Client rights; personal care; mental illness; dementia; developmental disabilities; depression; medication assistance; advanced communication skills; positive client behavior support; developing or improving client-centered activities; dealing with wandering or aggressive client behaviors; medical conditions; nurse delegation core training; peer mentor training; and advocacy for quality care training. The department may not require long-term care workers to obtain the training described in this section. This requirement to offer advanced training applies beginning January 1, 2012. [2009 c 580 § 13; 2009 c 2 § 10 (Initiative Measure No. 1029, approved November 4, 2008); 2007 c 361 § 5.]

Intent—Findings—Construction—Severability—Short title—2009 c 2 (Initiative Measure No. 1029): See notes following RCW 18.88B.020.

Construction—Severability—Captions not law—Short title—2007 c 361: See notes following RCW 74.39A.009.

Chapter 74.41 RCW
RESPITE CARE SERVICES

Sections

74.41.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. *(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*

74.41.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. ***(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 182.]

Chapter 74.46 RCW
NURSING FACILITY MEDICAID PAYMENT SYSTEM

Sections

74.46.431 Nursing facility medicaid payment rate allocations—Components—Minimum wage—Rules.
74.46.485 Case mix classification methodology—Notice of implementation.

74.46.431 Nursing facility medicaid payment rate allocations—Components—Minimum wage—Rules. (1) Effective July 1, 1999, nursing facility medicaid payment rate allocations shall be facility-specific and shall have seven

components: Direct care, therapy care, support services, operations, property, financing allowance, and variable return. The department shall establish and adjust each of these components, as provided in this section and elsewhere in this chapter, for each medicaid nursing facility in this state.

(2) Component rate allocations in therapy care, support services, variable return, operations, property, and financing allowance for essential community providers as defined in this chapter shall be based upon a minimum facility occupancy of eighty-five percent of licensed beds, regardless of how many beds are set up or in use. For all facilities other than essential community providers, effective July 1, 2001, component rate allocations in direct care, therapy care, support services, and variable return shall be based upon a minimum facility occupancy of eighty-five percent of licensed beds. For all facilities other than essential community providers, effective July 1, 2002, the component rate allocations in operations, property, and financing allowance shall be based upon a minimum facility occupancy of ninety percent of licensed beds, regardless of how many beds are set up or in use. For all facilities, effective July 1, 2006, the component rate allocation in direct care shall be based upon actual facility occupancy. The median cost limits used to set component rate allocations shall be based on the applicable minimum occupancy percentage. In determining each facility's therapy care component rate allocation under RCW 74.46.511, the department shall apply the applicable minimum facility occupancy adjustment before creating the array of facilities' adjusted therapy costs per adjusted resident day. In determining each facility's support services component rate allocation under RCW 74.46.515(3), the department shall apply the applicable minimum facility occupancy adjustment before creating the array of facilities' adjusted support services costs per adjusted resident day. In determining each facility's operations component rate allocation under RCW 74.46.521(3), the department shall apply the minimum facility occupancy adjustment before creating the array of facilities' adjusted general operations costs per adjusted resident day.

(3) Information and data sources used in determining medicaid payment rate allocations, including formulas, procedures, cost report periods, resident assessment instrument formats, resident assessment methodologies, and resident classification and case mix weighting methodologies, may be substituted or altered from time to time as determined by the department.

(4)(a) Direct care component rate allocations shall be established using adjusted cost report data covering at least six months. Adjusted cost report data from 1996 will be used for October 1, 1998, through June 30, 2001, direct care component rate allocations; adjusted cost report data from 1999 will be used for July 1, 2001, through June 30, 2006, direct care component rate allocations. Adjusted cost report data from 2003 will be used for July 1, 2006, through June 30, 2007, direct care component rate allocations. Adjusted cost report data from 2005 will be used for July 1, 2007, through June 30, 2009, direct care component rate allocations. Effective July 1, 2009, the direct care component rate allocation shall be rebased biennially, and thereafter for each odd-numbered year beginning July 1st, using the adjusted cost report data for the calendar year two years immediately preceding the rate rebase period, so that adjusted cost report data for calendar year 2007 is used for July 1, 2009, through June 30, 2011, and so forth.

(b) Direct care component rate allocations based on 1996 cost report data shall be adjusted annually for economic trends and conditions by a factor or factors defined in the biennial appropriations act. A different economic trends and conditions adjustment factor or factors may be defined in the biennial appropriations act for facilities whose direct care component rate is set equal to their adjusted June 30, 1998, rate, as provided in RCW 74.46.506(5)(i).

(c) Direct care component rate allocations based on 1999 cost report data shall be adjusted annually for economic trends and conditions by a factor or factors defined in the biennial appropriations act. A different economic trends and conditions adjustment factor or factors may be defined in the biennial appropriations act for facilities whose direct care component rate is set equal to their adjusted June 30, 1998, rate, as provided in RCW 74.46.506(5)(i).

(d) Direct care component rate allocations based on 2003 cost report data shall be adjusted annually for economic trends and conditions by a factor or factors defined in the biennial appropriations act. A different economic trends and conditions adjustment factor or factors may be defined in the biennial appropriations act for facilities whose direct care component rate is set equal to their adjusted June 30, 2006, rate, as provided in RCW 74.46.506(5)(i).

(e) Direct care component rate allocations established in accordance with this chapter shall be adjusted annually for economic trends and conditions by a factor or factors defined in the biennial appropriations act. The economic trends and conditions factor or factors defined in the biennial appropriations act shall not be compounded with the economic trends and conditions factor or factors defined in any other biennial appropriations acts before applying it to the direct care component rate allocation established in accordance with this chapter. When no economic trends and conditions factor or factors for either fiscal year are defined in a biennial appropriations act, no economic trends and conditions factor or factors defined in any earlier biennial appropriations act shall be applied solely or compounded to the direct care component rate allocation established in accordance with this chapter.

(5)(a) Therapy care component rate allocations shall be established using adjusted cost report data covering at least six months. Adjusted cost report data from 1996 will be used for October 1, 1998, through June 30, 2001, therapy care component rate allocations; adjusted cost report data from 1999 will be used for July 1, 2001, through June 30, 2005, therapy care component rate allocations. Adjusted cost report data from 1999 will continue to be used for July 1, 2005, through June 30, 2007, therapy care component rate allocations. Adjusted cost report data from 2005 will be used for July 1, 2007, through June 30, 2009, therapy care component rate allocations. Effective July 1, 2009, and thereafter for each odd-numbered year beginning July 1st, the therapy care component rate allocation shall be cost rebased biennially, using the adjusted cost report data for the calendar year two years immediately preceding the rate rebase period, so that adjusted cost report data for calendar year 2007 is used for July 1, 2009, through June 30, 2011, and so forth.

(b) Therapy care component rate allocations established in accordance with this chapter shall be adjusted annually for economic trends and conditions by a factor or factors defined in the biennial appropriations act. The economic trends and conditions factor or factors defined in the biennial appropriations act shall not be compounded with the economic trends and conditions factor or factors defined in any other biennial appropriations acts before applying it to the therapy care component rate allocation established in accordance with this chapter. When no economic trends and conditions factor or factors for either fiscal year are defined in a biennial appropriations act, no economic trends and conditions factor or factors defined in any earlier biennial appropriations act shall be applied solely or compounded to the therapy care component rate allocation established in accordance with this chapter.

(6)(a) Support services component rate allocations shall be established using adjusted cost report data covering at least six months. Adjusted cost report data from 1996 shall be used for October 1, 1998, through June 30, 2001, support services component rate allocations; adjusted cost report data from 1999 shall be used for July 1, 2001, through June 30, 2005, support services component rate allocations. Adjusted cost report data from 1999 will continue to be used for July 1, 2005, through June 30, 2007, support services component rate allocations. Adjusted cost report data from 2005 will be used for July 1, 2007, through June 30, 2009, support services component rate allocations. Effective July 1, 2009, and thereafter for each odd-numbered year beginning July 1st, the support services component rate allocation shall be cost rebased biennially, using the adjusted cost report data for the calendar year two years immediately preceding the rate rebase period, so that adjusted cost report data for calendar year 2007 is used for July 1, 2009, through June 30, 2011, and so forth.

(b) Support services component rate allocations established in accordance with this chapter shall be adjusted annually for economic trends and conditions by a factor or factors defined in the biennial appropriations act. The economic trends and conditions factor or factors defined in the biennial appropriations act shall not be compounded with the economic trends and conditions factor or factors defined in any other biennial appropriations acts before applying it to the support services component rate allocation established in accordance with this chapter. When no economic trends and conditions factor or factors for either fiscal year are defined in a biennial appropriations act, no economic trends and conditions factor or factors defined in any earlier biennial appropriations act shall be applied solely or compounded to the support services component rate allocation established in accordance with this chapter.

(7)(a) Operations component rate allocations shall be established using adjusted cost report data covering at least six months. Adjusted cost report data from 1996 shall be used for October 1, 1998, through June 30, 2001, operations component rate allocations; adjusted cost report data from 1999 shall be used for July 1, 2001, through June 30, 2006, operations component rate allocations. Adjusted cost report data from 2003 will be used for July 1, 2006, through June 30, 2007, operations component rate allocations. Adjusted cost report data from 2005 will be used for July 1, 2007, through June 30, 2009, operations component rate allocations. Effective July 1, 2009, and thereafter for each odd-numbered year beginning July 1st, the operations component rate allocation shall be cost rebased biennially, using the adjusted cost report data for the calendar year two years immediately preceding the rate rebase period, so that adjusted cost report data for calendar year 2007 is used for July 1, 2009, through June 30, 2011, and so forth.

(b) Operations component rate allocations established in accordance with this chapter shall be adjusted annually for economic trends and conditions by a factor or factors defined in the biennial appropriations act. The economic trends and conditions factor or factors defined in the biennial appropriations act shall not be compounded with the economic trends and conditions factor or factors defined in any other biennial appropriations acts before applying it to the operations component rate allocation established in accordance with this chapter. When no economic trends and conditions factor or factors for either fiscal year are defined in a biennial appropriations act, no economic trends and conditions factor or factors defined in any earlier biennial appropriations act shall be applied solely or compounded to the operations component rate allocation established in accordance with this chapter. A different economic trends and conditions adjustment factor or factors may be defined in the biennial appropriations act for facilities whose operations component rate is set equal to their adjusted June 30, 2006, rate, as provided in RCW 74.46.521(4).

(8) For July 1, 1998, through September 30, 1998, a facility's property and return on investment component rates shall be the facility's June 30, 1998, property and return on investment component rates, without increase. For October 1, 1998, through June 30, 1999, a facility's property and return on investment component rates shall be rebased utilizing 1997 adjusted cost report data covering at least six months of data.

(9) Total payment rates under the nursing facility medicaid payment system shall not exceed facility rates charged to the general public for comparable services.

(10) Medicaid contractors shall pay to all facility staff a minimum wage of the greater of the state minimum wage or the federal minimum wage.

(11) The department shall establish in rule procedures, principles, and conditions for determining component rate allocations for facilities in circumstances not directly addressed by this chapter, including but not limited to: The need to prorate inflation for partial-period cost report data, newly constructed facilities, existing facilities entering the medicaid program for the first time or after a period of absence from the program, existing facilities with expanded new bed capacity, existing medicaid facilities following a change of ownership of the nursing facility business, facilities banking beds or converting beds back into service, facilities temporarily reducing the number of set-up beds during a remodel, facilities having less than six months of either resident assessment, cost report data, or both, under the current contractor prior to rate setting, and other circumstances.

(12) The department shall establish in rule procedures, principles, and conditions, including necessary threshold costs, for adjusting rates to reflect capital improvements or new requirements imposed by the department or the federal

government. Any such rate adjustments are subject to the provisions of RCW 74.46.421.

(13) Effective July 1, 2001, medicaid rates shall continue to be revised downward in all components, in accordance with department rules, for facilities converting banked beds to active service under chapter 70.38 RCW, by using the facility's increased licensed bed capacity to recalculate minimum occupancy for rate setting. However, for facilities other than essential community providers which bank beds under chapter 70.38 RCW, after May 25, 2001, medicaid rates shall be revised upward, in accordance with department rules, in direct care, therapy care, support services, and variable return components only, by using the facility's decreased licensed bed capacity to recalculate minimum occupancy for rate setting, but no upward revision shall be made to operations, property, or financing allowance component rates. The direct care component rate allocation shall be adjusted, without using the minimum occupancy assumption, for facilities that convert banked beds to active service, under chapter 70.38 RCW, beginning on July 1, 2006. Effective July 1, 2007, component rate allocations for direct care shall be based on actual patient days regardless of whether a facility has converted banked beds to active service.

(14) Facilities obtaining a certificate of need or a certificate of need exemption under chapter 70.38 RCW after June 30, 2001, must have a certificate of capital authorization in order for (a) the depreciation resulting from the capitalized addition to be included in calculation of the facility's property component rate allocation; and (b) the net invested funds associated with the capitalized addition to be included in calculation of the facility's financing allowance rate allocation. [2009 c 570 § 1; 2008 c 263 § 2; 2007 c 508 § 2; 2006 c 258 § 2; 2005 c 518 § 944; 2004 c 276 § 913; 2001 1st sp.s. c 8 § 5; 1999 c 353 § 4; 1998 c 322 § 19.]

Effective date—2009 c 570: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 19, 2009]." [2009 c 570 § 3.]

Effective date—2007 c 508: See note following RCW 74.46.410.

Effective date—2006 c 258: See note following RCW 74.46.020.

Severability—Effective date—2005 c 518: See notes following RCW 28A.500.030.

Severability—Effective date—2004 c 276: See notes following RCW 43.330.167.

Severability—Effective dates—2001 1st sp.s. c 8: See notes following RCW 74.46.020.

Effective dates—1999 c 353: See note following RCW 74.46.020.

74.46.485 Case mix classification methodology—Notice of implementation. (1) The department shall:

(a) Employ the resource utilization group III case mix classification methodology. The department shall use the forty-four group index maximizing model for the resource utilization group III grouper version 5.10, but the department may revise or update the classification methodology to reflect advances or refinements in resident assessment or classification, subject to federal requirements; and

(b) Implement minimum data set 3.0 under the authority of this section and RCW 74.46.431(3). The department must notify nursing home contractors twenty-eight days in advance the date of implementation of the minimum data set 3.0. In the notification, the department must identify for all quarterly rate settings following the date of minimum data set 3.0 implementation a previously established quarterly case mix adjustment established for the quarterly rate settings that will be used for quarterly case mix calculations in direct care until minimum data set 3.0 is fully implemented. After the department has fully implemented minimum data set 3.0, it must adjust any quarter in which it used the previously established quarterly case mix adjustment using the new minimum data set 3.0 data.

(2) A default case mix group shall be established for cases in which the resident dies or is discharged for any purpose prior to completion of the resident's initial assessment. The default case mix group and case mix weight for these cases shall be designated by the department.

(3) A default case mix group may also be established for cases in which there is an untimely assessment for the resident. The default case mix group and case mix weight for these cases shall be designated by the department. [2009 c 570 § 2; 1998 c 322 § 22.]

Effective date—2009 c 570: See note following RCW 74.46.431.

Title 76

FORESTS AND FOREST PRODUCTS

Chapters

76.06 Forest insect and disease control.
76.09 Forest practices.
76.48 Specialized forest products.

Chapter 76.06 RCW
FOREST INSECT AND DISEASE CONTROL

Sections

76.06.150 Forest health—Commissioner of public lands designated as state's lead—Report to legislature.

76.06.150 Forest health—Commissioner of public lands designated as state's lead—Report to legislature. (1) The commissioner of public lands is designated as the state of Washington's lead for all forest health issues.

(2) The commissioner of public lands shall strive to promote communications between the state and the federal government regarding forest land management decisions that potentially affect the health of forests in Washington and will allow the state to have an influence on the management of federally owned land in Washington. Such government-to-government cooperation is vital if the condition of the state's public and private forest lands are to be protected. These activities may include, when deemed by the commissioner to be in the best interest of the state:

(a) Representing the state's interest before all appropriate local, state, and federal agencies;

(b) Assuming the lead state role for developing formal comments on federal forest management plans that may have an impact on the health of forests in Washington;

(c) Pursuing in an expedited manner any available and appropriate cooperative agreements, including cooperating agency status designation, with the United States forest ser-

vice and the United States bureau of land management that allow for meaningful participation in any federal land management plans that could affect the department's strategic plan for healthy forests and effective fire prevention and suppression, including the pursuit of any options available for giving effect to the cooperative philosophy contained within the national environmental policy act of 1969 (42 U.S.C. Sec. 4331); and

(d) Pursuing agreements with federal agencies in the service of forest biomass energy partnerships and cooperatives authorized under RCW 43.30.835 through 43.30.840.

(3) The commissioner of public lands shall report to the chairs of the appropriate standing committees of the legislature every year on progress under this section, including the identification, if deemed appropriate by the commissioner, of any needed statutory changes, policy issues, or funding needs. [2009 c 163 § 5; 2004 c 218 § 2.]

Findings—Intent—2009 c 163: See note following RCW 43.30.835.

Effective date—2004 c 218: See note following RCW 76.06.140.

Chapter 76.09 RCW
FOREST PRACTICES

Sections

76.09.020 Definitions.
76.09.040 Forest practices rules—Adoption—Review of proposed rules—Hearings—Program for the acquisition of riparian open space.

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

(1) "Adaptive management" means reliance on scientific methods to test the results of actions taken so that the management and related policy can be changed promptly and appropriately.

(2) "Appeals board" means the forest practices appeals board created by RCW 76.09.210.

(3) "Application" means the application required pursuant to RCW 76.09.050.

(4) "Aquatic resources" includes water quality, salmon, other species of the vertebrate classes Cephalaspidomorphi and Osteichthyes identified in the forests and fish report, the Columbia torrent salamander *(Rhyacotriton kezeri)*, the Cascade torrent salamander *(Rhyacotriton cascadae)*, the Olympic torrent salamander *(Rhyacotriton olympian)*, the Dunn's salamander *(Plethodon dunni)*, the Van Dyke's salamander *(Plethodon vandyke)*, the tailed frog *(Ascaphus truei)*, and their respective habitats.

(5) "Board" means the forest practices board created in RCW 76.09.030.

(6) "Commissioner" means the commissioner of public lands.

(7) "Contiguous" means land adjoining or touching by common corner or otherwise. Land having common ownership divided by a road or other right-of-way shall be considered contiguous.

(8) "Conversion to a use other than commercial timber operation" means a bona fide conversion to an active use which is incompatible with timber growing and as may be defined by forest practices rules.

(9) "Department" means the department of natural resources.

(10) "Fish passage barrier" means any artificial instream structure that impedes the free passage of fish.

(11) "Forest land" means all land which is capable of supporting a merchantable stand of timber and is not being actively used for a use which is incompatible with timber growing. Forest land does not include agricultural land that is or was enrolled in the conservation reserve enhancement program by contract if such agricultural land was historically used for agricultural purposes and the landowner intends to continue to use the land for agricultural purposes in the future. As it applies to the operation of the road maintenance and abandonment plan element of the forest practices rules on small forest landowners, the term "forest land" excludes:

(a) Residential home sites, which may include up to five acres; and

(b) Cropfields, orchards, vineyards, pastures, feedlots, fish pens, and the land on which appurtenances necessary to the production, preparation, or sale of crops, fruit, dairy products, fish, and livestock exist.

(12) "Forest landowner" means any person in actual control of forest land, whether such control is based either on legal or equitable title, or on any other interest entitling the holder to sell or otherwise dispose of any or all of the timber on such land in any manner. However, any lessee or other person in possession of forest land without legal or equitable title to such land shall be excluded from the definition of "forest landowner" unless such lessee or other person has the right to sell or otherwise dispose of any or all of the timber located on such forest land.

(13) "Forest practice" means any activity conducted on or directly pertaining to forest land and relating to growing, harvesting, or processing timber, including but not limited to:

(a) Road and trail construction;

(b) Harvesting, final and intermediate;

(c) Precommercial thinning;

(d) Reforestation;

(e) Fertilization;

(f) Prevention and suppression of diseases and insects;

(g) Salvage of trees; and

(h) Brush control.

"Forest practice" shall not include preparatory work such as tree marking, surveying and road flagging, and removal or harvesting of incidental vegetation from forest lands such as berries, ferns, greenery, mistletoe, herbs, mushrooms, and other products which cannot normally be expected to result in damage to forest soils, timber, or public resources.

(14) "Forest practices rules" means any rules adopted pursuant to RCW 76.09.040.

(15) "Forest road," as it applies to the operation of the road maintenance and abandonment plan element of the forest practices rules on small forest landowners, means a road or road segment that crosses land that meets the definition of forest land, but excludes residential access roads.

(16) "Forest trees" does not include hardwood trees cultivated by agricultural methods in growing cycles shorter than fifteen years if the trees were planted on land that was not in forest use immediately before the trees were planted and before the land was prepared for planting the trees. "Forest trees" includes Christmas trees, but does not include

Christmas trees that are cultivated by agricultural methods, as that term is defined in RCW 84.33.035.

(17) "Forests and fish report" means the forests and fish report to the board dated April 29, 1999.

(18) "Operator" means any person engaging in forest practices except an employee with wages as his or her sole compensation.

(19) "Person" means any individual, partnership, private, public, or municipal corporation, county, the department or other state or local governmental entity, or association of individuals of whatever nature.

(20) "Public resources" means water, fish and wildlife, and in addition shall mean capital improvements of the state or its political subdivisions.

(21) "Small forest landowner" has the same meaning as defined in RCW 76.09.450.

(22) "Timber" means forest trees, standing or down, of a commercial species, including Christmas trees. However, "timber" does not include Christmas trees that are cultivated by agricultural methods, as that term is defined in RCW 84.33.035.

(23) "Timber owner" means any person having all or any part of the legal interest in timber. Where such timber is subject to a contract of sale, "timber owner" shall mean the contract purchaser.

(24) "Unconfined channel migration zone" means the area within which the active channel of an unconfined stream is prone to move and where the movement would result in a potential near-term loss of riparian forest adjacent to the stream. Sizeable islands with productive timber may exist within the zone.

(25) "Unconfined stream" means generally fifth order or larger waters that experience abrupt shifts in channel location, creating a complex floodplain characterized by extensive gravel bars, disturbance species of vegetation of variable age, numerous side channels, wall-based channels, oxbow lakes, and wetland complexes. Many of these streams have dikes and levees that may temporarily or permanently restrict channel movement. [2009 c 354 § 5; 2009 c 246 § 4; 2003 c 311 § 3; 2002 c 17 § 1. Prior: 2001 c 102 § 1; 2001 c 97 § 2; 1999 sp.s. c 4 § 301; 1974 ex.s. c 137 § 2.]

Reviser's note: (1) The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

(2) This section was amended by 2009 c 246 § 4 and by 2009 c 354 § 5, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Finding—Intent—2009 c 354: See note following RCW 84.33.140.

Findings—2003 c 311: "(1) The legislature finds that chapter 4, Laws of 1999 sp. sess. strongly encouraged the forest practices board to adopt administrative rules that were substantially similar to the recommendations presented to the legislature in the form of the forests and fish report. The rules adopted pursuant to the 1999 legislation require all forest landowners to complete a road maintenance and abandonment plan, and those rules cannot be changed by the forest practices board without either a final order from a court, direct instructions from the legislature, or a recommendation from the adaptive management process. In the time since the enactment of chapter 4, Laws of 1999 sp. sess., it has become clear that both the planning aspect and the implementation aspect of the road maintenance and abandonment plan requirement may cause an unforeseen and unintended disproportionate financial hardship on small forest landowners.

(2) The legislature further finds that the commissioner of public lands and the governor have explored solutions that minimize the hardship caused to small forest landowners by the forest road maintenance and abandonment requirements of the forests and fish law, while maintaining protection for public resources. This act represents recommendations stemming from that process.

(3) The legislature further finds that it is in the state's interest to help small forest landowners comply with the requirements of the forest practices rules in a way that does not require the landowner to spend unreasonably high and unpredictable amounts of money to complete road maintenance and abandonment plan preparation and implementation. Small forest landowners provide significant wildlife habitat and serve as important buffers between urban development and Washington's public forest land holdings." [2003 c 311 § 1.]

Effective date—2003 c 311: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 14, 2003]." [2003 c 311 § 13.]

Part headings not law—1999 sp.s. c 4: See note following RCW 77.85.180.

76.09.040 Forest practices rules—Adoption—Review of proposed rules—Hearings—Program for the acquisition of riparian open space. (1) Where necessary to accomplish the purposes and policies stated in RCW 76.09.010, and to implement the provisions of this chapter, the board shall adopt forest practices rules pursuant to chapter 34.05 RCW and in accordance with the procedures enumerated in this section that:

(a) Establish minimum standards for forest practices;

(b) Provide procedures for the voluntary development of resource management plans which may be adopted as an alternative to the minimum standards in (a) of this subsection if the plan is consistent with the purposes and policies stated in RCW 76.09.010 and the plan meets or exceeds the objectives of the minimum standards;

(c) Set forth necessary administrative provisions;

(d) Establish procedures for the collection and administration of forest practice fees as set forth by this chapter; and

(e) Allow for the development of watershed analyses.

Forest practices rules pertaining to water quality protection shall be adopted by the board after reaching agreement with the director of the department of ecology or the director's designee on the board with respect thereto. All other forest practices rules shall be adopted by the board.

Forest practices rules shall be administered and enforced by either the department or the local governmental entity as provided in this chapter. Such rules shall be adopted and administered so as to give consideration to all purposes and policies set forth in RCW 76.09.010.

(2) The board shall prepare proposed forest practices rules. In addition to any forest practices rules relating to water quality protection proposed by the board, the department of ecology may submit to the board proposed forest practices rules relating to water quality protection.

Prior to initiating the rule-making process, the proposed rules shall be submitted for review and comments to the department of fish and wildlife and to the counties of the state. After receipt of the proposed forest practices rules, the department of fish and wildlife and the counties of the state shall have thirty days in which to review and submit comments to the board, and to the department of ecology with respect to its proposed rules relating to water quality protection. After the expiration of such thirty day period the board and the department of ecology shall jointly hold one or more hearings on the proposed rules pursuant to chapter 34.05 RCW. At such hearing(s) any county may propose specific

forest practices rules relating to problems existing within such county. The board may adopt and the department of ecology may approve such proposals if they find the proposals are consistent with the purposes and policies of this chapter.

(3) The board shall establish by rule a program for the acquisition of riparian open space and critical habitat for threatened or endangered species as designated by the board. Acquisition must be a conservation easement. Lands eligible for acquisition are forest lands within unconfined channel migration zones or forest lands containing critical habitat for threatened or endangered species as designated by the board. Once acquired, these lands may be held and managed by the department, transferred to another state agency, transferred to an appropriate local government agency, or transferred to a private nonprofit nature conservancy corporation, as defined in RCW 64.04.130, in fee or transfer of management obligation. The board shall adopt rules governing the acquisition by the state or donation to the state of such interest in lands including the right of refusal if the lands are subject to unacceptable liabilities. The rules shall include definitions of qualifying lands, priorities for acquisition, and provide for the opportunity to transfer such lands with limited warranties and with a description of boundaries that does not require full surveys where the cost of securing the surveys would be unreasonable in relation to the value of the lands conveyed. The rules shall provide for the management of the lands for ecological protection or fisheries enhancement. For the purposes of conservation easements entered into under this section, the following apply: (a) For conveyances of a conservation easement in which the landowner conveys an interest in the trees only, the compensation must include the timber value component, as determined by the cruised volume of any timber located within the channel migration zone or critical habitat for threatened or endangered species as designated by the board, multiplied by the appropriate quality code stumpage value for timber of the same species shown on the appropriate table used for timber harvest excise tax purposes under RCW 84.33.091; (b) for conveyances of a conservation easement in which the landowner conveys interests in both land and trees, the compensation must include the timber value component in (a) of this subsection plus such portion of the land value component as determined just and equitable by the department. The land value component must be the acreage of qualifying channel migration zone or critical habitat for threatened or endangered species as determined by the board, to be conveyed, multiplied by the average per acre value of all commercial forest land in western Washington or the average for eastern Washington, whichever average is applicable to the qualifying lands. The department must determine the western and eastern Washington averages based on the land value tables established by RCW 84.33.140 and revised annually by the department of revenue.

(4) Subject to appropriations sufficient to cover the cost of such an acquisition program and the related costs of administering the program, the department must establish a conservation easement in land that an owner tenders for purchase; provided that such lands have been taxed as forest lands and are located within an unconfined channel migration zone or contain critical habitat for threatened or endangered species as designated by the board. Lands acquired under this section shall become riparian or habitat open space. These acquisitions shall not be deemed to trigger the compensating tax of chapters 84.33 and 84.34 RCW.

(5) Instead of offering to sell interests in qualifying lands, owners may elect to donate the interests to the state.

(6) Any acquired interest in qualifying lands by the state under this section shall be managed as riparian open space or critical habitat. [2009 c 246 § 1; 2000 c 11 § 3; 1999 sp.s. c 4 § 701; 1997 c 173 § 1; 1994 c 264 § 48; 1993 c 443 § 2; 1988 c 36 § 46; 1987 c 95 § 8; 1974 ex.s. c 137 § 4.]

Part headings not law—1999 sp.s. c 4: See note following RCW 77.85.180.

Effective date—1993 c 443: See note following RCW 76.09.010.

Chapter 76.48 RCW
SPECIALIZED FOREST PRODUCTS

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76.48.010 Recodified as RCW 76.48.011. See Supplementary Table of Disposition of Former RCW Sections, this volume.

76.48.011 Declaration of public interest. (1) It is in the public interest of this state to protect an important natural resource and to provide protection to the landowners of the state of Washington from the theft of specialized forest products.

(2) To satisfy this public interest, this chapter is intended to:

(a) Provide law enforcement with reasonable tools;

(b) Reasonably protect landowners from theft;

(c) Ensure that requirements are not unduly burdensome to those harvesting, transporting, possessing, and purchasing specialized forest products;

(d) Craft requirements that are clear and readily understandable; and

(e) Establish requirements that are able to be administered and enforced consistently statewide. [2009 c 245 § 2; 1967 ex.s. c 47 § 2. Formerly RCW 76.48.010.]

Finding—Intent—2009 c 245: "(1) The legislature finds that the specialized forest products work group created pursuant to section 2, chapter 392, Laws of 2007 produced a number of consensus recommendations to the legislature as to how the permitting requirements of chapter 76.48 RCW can be improved. In making recommendations, the work group focused on the goals enumerated in RCW 76.48.011.

(2) It is the intent of the legislature to enact those recommendations contained in the report submitted to the legislature from the specialized forest products work group in December 2008 that require statutory modifications.

(3) It is also the intent of the legislature for the department of natural resources, along with other state and local agencies, to take those administrative actions necessary to execute the recommendations contained in the report that do not require statutory changes. When taking administrative actions regarding specialized forest products, those actions should, when appropriate, be conducted consistent with recommendations contained in the report submitted to the legislature from the specialized forest products work group." [2009 c 245 § 1.]

76.48.020 Recodified as RCW 76.48.021. See Supplementary Table of Disposition of Former RCW Sections, this volume.

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

(1) "Artistic cedar product" means a product made from the wood of a cedar tree, including western red cedar, that is not included in the definition of "cedar products" and has been carved, turned, or otherwise manipulated to more than an insignificant degree with the objective intent to be an artistic expression and that would be or is recognized by the applicable local market as having an economic value greater than the value of the raw materials used. Examples of artistic cedar products include, but are not limited to:

(a) Chainsaw carvings;

(b) Hand carvings;

(c) Decorative bowls and boxes.

(2) "Authorization" means a properly completed preprinted form authorizing the transportation or possession of Christmas trees prepared consistent with RCW 76.48.041.

(3) "Bill of lading" means a written or printed itemized list or statement of particulars pertinent to the transportation or possession of a specialized forest product prepared consistent with RCW 76.48.041.

(4) "Cascara bark" means the bark of a Cascara tree.

(5)(a) "Cedar products" means the following if made from the wood of a cedar tree, including western red cedar:

(i) Shake and shingle bolts;

(ii) Fence posts and fence rails;

(iii) Logs not covered by a valid approved forest practices application or notification under chapter 76.09 RCW; and

(iv) Other pieces measuring fifteen inches or longer.

(b) "Cedar products" does not include those materials identified in the definition of "processed cedar products" or "artistic cedar products."

(6) "Christmas trees" means any evergreen trees including fir, pine, spruce, cedar, and other coniferous species commonly known as Christmas trees. The definition of Christmas trees includes trees with or without the roots intact and the tops of the trees. The definition of Christmas trees does not include trees without limbs or branches.

(7) "Cut or picked evergreen foliage" means evergreen boughs, huckleberry foliage, salal, fern, Oregon grape, rhododendron, mosses, bear grass, and other cut or picked evergreen products. "Cut or picked evergreen foliage" does not include cones, berries, any foliage that does not remain green year-round, seeds, or any plant listed on the state noxious weed list under RCW 17.10.080.

(8) "Department" means the department of natural resources.

(9) "First specialized forest products buyer" means the first person that receives any specialized forest products after they leave the harvest site.

(10) "Harvest" means to separate, by cutting, prying, picking, peeling, breaking, pulling, splitting, or otherwise removing, a specialized forest product. "Harvest" includes both removing a specialized forest product from its original physical connection with the land and collecting a specialized forest product that has been previously separated from the land.

(11) "Harvest site" means each location where one or more persons are engaged in harvesting specialized forest products close enough to each other that communication can be conducted with an investigating law enforcement officer in a normal conversational tone.

(12) "Huckleberry" means the following species of edible berries, if they are not nursery grown: Big huckleberry (*Vaccinium membranaceum*), Cascade blueberry (*Vaccinium deliciosum*), evergreen huckleberry (*Vaccinium ovatum*), red huckleberry (*Vaccinium parvifolium*), globe huckleberry (*Vaccinium globulare*), oval-leaf huckleberry (*Vaccinium ovalifolium*), Alaska huckleberry (*Vaccinium alaskaense*), dwarf huckleberry (*Vaccinium caespitosum*), western huckleberry (*Vaccinium occidentale*), bog blueberry (*Vaccinium uliginosum*), dwarf bilberry (*Vaccinium myrtillus*), and grouse whortleberry (*Vaccinium scoparium*).

(13) "Landowner" means, with regard to real property, the private owner, the state of Washington or any political subdivision, the federal government, or a person who by deed, contract, or lease has authority to harvest and sell the specialized forest products of the property. "Landowner" does not include the purchaser or successful high bidder at a public or private timber sale.

(14) "Native ornamental trees and shrubs" means any trees or shrubs which are not nursery grown and which have been removed from the ground with the roots intact.

(15) "Permittee" means a person who is authorized by a permit issued consistent with this chapter to harvest, possess, and transport specialized forest products or to sell huckleberries.

(16) "Permittor" means the landowner of the land from where specialized forest products were, or are planned to be, harvested under a permit issued consistent with this chapter.

(17) "Person" includes the plural and all corporations, foreign or domestic, copartnerships, firms, and associations of persons.

(18) "Processed cedar products" means products made from the wood of a cedar tree, including western red cedar, that have undergone more than an insignificant degree of value-added processing and are not included in the definition of "cedar products." Examples of processed cedar products include, but are not limited to:

(a) Shakes;

(b) Shingles;

(c) Hop poles;

(d) Pickets; and

(e) Stakes.

(19) "Sales invoice" means a written or printed itemized list or statement of particulars pertinent to the transportation or possession of a specialized forest product prepared consistent with RCW 76.48.041.

(20) "Secondary specialized forest products buyer" means any person who receives any specialized forest products after the transaction with the first specialized forest products buyer.

(21) "Specialized forest products" means the following:

(a) Specialty wood;

(b) More than five Christmas trees;

(c) More than five native ornamental trees and shrubs;

(d) More than twenty pounds of cut or picked evergreen foliage;

(e) More than five pounds of Cascara bark; and

(f) More than five United States gallons of wild edible mushrooms.

(22) "Specialized forest products permit" or "permit" means a printed document and all attachments completed in compliance with the requirements of this chapter and includes both validated permits and verifiable permits.

(23) "Specialty wood" means:

(a) A cedar product; or

(b) Englemann spruce, Sitka spruce, big leaf maple, or western red alder that:

(i) Is in logs, chunks, slabs, stumps, or burls;

(ii) Is capable of being cut into a segment that is without knots in a portion of the surface area at least nineteen inches long and seven and a [one-] quarter inches wide when measured from the outer surface toward the center;

(iii) Measures:

(A) Nineteen inches or longer;

(B) Greater than one and three-quarter inches thick; and

(C) Seven and one-quarter inches or greater in width; and

(iv) Is being harvested or transported from areas not associated with the concurrent logging of timber stands:

(A) Under a forest practices application approval or notification received by the department under chapter 76.09 RCW; or

(B) Under a contract or permit issued by an agency of the United States government.

(24) "Specialty wood processor" means any person who purchases, takes, or retains possession of specialty wood for later sale in the same or modified form following removal and delivery from the land where harvested.

(25) "Transportation" means the physical conveyance of specialized forest products outside or off of a harvest site by any means.

(26) "True copy" means a replica of a specialized forest products permit reproduced as provided in RCW 76.48.051.

(27) "Validated permit" means a permit that is validated as required under this chapter prior to the harvest, transportation, or possession of specialized forest products.

(28) "Verifiable permit" means a permit that contains the required information allowing a law enforcement officer to verify the validity of the information contained on the permit but that does not require validation prior to the harvest, transportation, or possession of specialized forest products.

(29) "Wild edible mushrooms" means edible mushrooms not cultivated or propagated by domestic means. [2009 c 245 § 3; 2008 c 191 § 9; 2007 c 392 § 3; 2005 c 401 § 1; 2000 c 11 § 18; 1995 c 366 § 1; 1992 c 184 § 1; 1979 ex.s. c 94 § 1; 1977 ex.s. c 147 § 1; 1967 ex.s. c 47 § 3. Formerly RCW 76.48.020.]

Finding—Intent—2009 c 245: See note following RCW 76.48.011.

Severability—1995 c 366: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1995 c 366 § 19.]

76.48.030 Recodified as RCW 76.48.131. See Supplementary Table of Disposition of Former RCW Sections, this volume.

76.48.031 Specialized forest products permits—Required—Inspection. (1) Except as provided in RCW 76.48.211, a completed specialized forest products permit issued under this chapter is required prior to engaging in the following activities:

(a) Harvesting any specialized forest products from any lands, including his or her own land.

(b) Possessing or transporting any specialized forest products, unless the person has in his or her possession either of the following in lieu of a permit:

(i) A true copy of the permit;

(ii) If the person is transporting the specialized forest product from a location other than the harvest site or is a first or secondary specialized forest products buyer, a sales invoice, bill of lading, or, for the possession and transportation of Christmas trees only, an authorization if a copy of the

authorization has been filed prior to the harvest of the Christmas trees with the sheriff's office for the county in which the Christmas trees are to be harvested;

(iii) A bill of lading or documentation issued in or by another state, a Canadian province, or the federal government indicating the true origin of the specialized forest products as being outside of Washington; or

(iv) If the products were harvested within the operational area defined by a valid forest practices application or notification under chapter 76.09 RCW, a sequentially numbered load ticket generated by the landowner or the landowner's agent that includes, at a minimum, all information required on a bill of lading and the forest practices application number.

(c) Selling, or offering for sale, any amount of raw or unprocessed huckleberries, regardless if the huckleberries were harvested with the consent of the landowner, unless the possessor of the huckleberries being offered for sale is able to show that the huckleberries originated on land owned by the United States forest service and displays a valid permit from the United States forest service that lawfully entitles the possessor to harvest the huckleberries in question.

(2)(a) Unless otherwise designated by the permittor as provided in this subsection, a permit or true copy must be readily available for inspection at each harvest site.

(b) An individual permit or true copy must be carried and made readily available for inspection by each individual permittee at a harvest site if the permittor designated an individual permit or true copy as an additional condition or limitation specified on the permit under RCW 76.48.081. [2009 c 245 § 4; 2008 c 191 § 3; 2005 c 401 § 3; 1995 c 366 § 5; 1992 c 184 § 2; 1979 ex.s. c 94 § 5; 1977 ex.s. c 147 § 5; 1967 ex.s. c 47 § 7. Formerly RCW 76.48.060.]

Finding—Intent—2009 c 245: See note following RCW 76.48.011.

Severability—1995 c 366: See note following RCW 76.48.020.

76.48.040 Recodified as RCW 76.48.181. See Supplementary Table of Disposition of Former RCW Sections, this volume.

76.48.041 Contents of authorization, sales invoice, or bill of lading. An authorization, sales invoice, or bill of lading must specify the following in order to satisfy the requirements of this chapter:

(1) The date of the product's transportation.

(2) The amount and type of specialized forest products being transported.

(3) The name and address of the person receiving the specialized forest products.

(4) The name and address of the first or secondary specialized forest products buyer, specialty wood processor, or other person from where the specialized forest products are being transported.

(5) The name of the driver transporting the specialized forest products.

(6) The license plate number of the vehicle transporting the specialized forest product. [2009 c 245 § 5; 1979 ex.s. c 94 § 7; 1967 ex.s. c 47 § 9. Formerly RCW 76.48.080.]

Finding—Intent—2009 c 245: See note following RCW 76.48.011.

76.48.050 Recodified as RCW 76.48.081. See Supplementary Table of Disposition of Former RCW Sections, this volume.

76.48.051 Specialized forest products permit—True copy. (1) A true copy of a specialized forest products permit is valid if:

(a) The copy is reproduced by a copy machine capable of effectively reproducing the permit information required under RCW 76.48.081; and

(b)(i) The permittee has provided an original signature in the space provided on the face of the copy.

(ii) An actual signature of the permittor is also required for a true copy to be valid if the permittor indicates on the space provided for signatures on the original permit that the actual signature of the permittor is required for the validation of any copies.

(2) A true copy is effective until the expiration date of the underlying permit unless an earlier date is provided by the signatories to the copy.

(3) Either signatory to a permit may condition the use of the true copy for only harvesting, only possessing, only transporting, or a combination of harvesting, possessing, and transporting the associated specialized forest products by indicating the limitations of the true copy on the permit or the copy.

(4) Any permittee issuing a true copy must record and retain for one year the following information:

(a) The date the true copy is issued;

(b) The license plate number and make and model of the vehicle to be used with the true copy;

(c) The name and address of the person receiving the true copy;

(d) The unique number assigned to a valid state identification document issued to the person; and

(e) The expiration date of the true copy. [2009 c 245 § 6.]

Finding—Intent—2009 c 245: See note following RCW 76.48.011.

76.48.060 Recodified as RCW 76.48.031. See Supplementary Table of Disposition of Former RCW Sections, this volume.

76.48.061 Permit requirements. (1)(a) Except for the sale of huckleberries, the permit requirements of RCW 76.48.031 may be satisfied with either a validated permit or a verifiable permit. The decision to use a validated or verifiable permit must be made and agreed upon jointly by the permittee and the permittor.

(b) For the sale of huckleberries, only a validated permit satisfies the requirements of RCW 76.48.031.

(2)(a) Forms for both validated permits and verifiable permits must be provided by the department and be made available in reasonable quantities through county sheriff offices and other locations deemed appropriate by the department.

(b) In designing the forms, the department shall ensure that:

(i) All mandatory requirements of this chapter are satisfied;

(ii) The type of permit is clearly marked on the form;

(iii) Each permit is separately numbered and the issuance of the permits are by unique numbers; and

(iv) The form is designed in a manner allowing a permittor to require his or her signature on all true copies as provided in RCW 76.48.051.

(3) Permit forms must be completed in triplicate for each property and in each county in which specialized forest products are proposed to be harvested or huckleberries sold.

(4)(a) Within five business days after the signature of the permittor on the form for a verifiable permit, as required in RCW 76.48.081, the original permit form must be provided by the permittee to the sheriff of the county in which the specialized forest products are to be harvested. The permittee may provide the permit form in a manner convenient to the permittee and the sheriff's office, including in-person presentation or by mail. If mailed, the permit form must be postmarked within the time window established under this subsection.

(b) Upon full completion, as provided in RCW 76.48.081, the permit form for a validated permit must, except for permits to sell huckleberries, be mailed or presented for validation to the sheriff of the county in which the specialized forest products are to be harvested. Validated permits relating to the sale of huckleberries may be validated by the sheriff of any county in the state.

(5) Two copies of the permit must be retained by the permittee, of which one copy must be given or mailed to the permittor by the permittee. The original permit must be retained in the office of the county sheriff for the purposes of verifying the permit, if necessary.

(6) All permits expire no later than the end of the calendar year in which they are issued.

(7) Permits provided under this section are subject to any other conditions or limitations that the permittor may specify.

(8) Before a permit form is accepted or validated by a sheriff, sufficient personal identification may be required to reasonably identify the person mailing or presenting the permit form. The sheriff may conduct other investigations as deemed necessary to determine the validity of the information alleged on the form.

(9) In the event a single land ownership is situated in two or more counties, a permit form must be completed, as provided in this section, for the portions of the ownership situated in each county.

(10) Permits that are validated by or provided to a sheriff's office under this section must be maintained by that office for a length of time determined by the appropriate records retention schedule. [2009 c 245 § 7.]

Finding—Intent—2009 c 245: See note following RCW 76.48.011.

76.48.062 Recodified as RCW 76.48.091. See Supplementary Table of Disposition of Former RCW Sections, this volume.

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

76.48.071 Validation of forms for verifiable permits and validated permits. (1) Forms for a verifiable permit become valid for the purposes of RCW 76.48.031 upon the completion of all information required by RCW 76.48.081.

(2) Forms for a validated permit become valid for the purposes of RCW 76.48.031 upon the validation of the form by the appropriate county sheriff. [2009 c 245 § 8.]

Finding—Intent—2009 c 245: See note following RCW 76.48.011.

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

76.48.080 Recodified as RCW 76.48.041. See Supplementary Table of Disposition of Former RCW Sections, this volume.

76.48.081 Specialized forest products permits—Expiration—Specifications. (1) A specialized forest products permit form may not be validated or accepted for verification by a sheriff unless the permit satisfies the requirements of this section.

(2) A properly completed permit form shall include:

(a) The date of its execution and expiration;

(b) The name, address, up to three telephone numbers, and signature of the permittee and permittor;

(c) The type of specialized forest products to be harvested or transported;

(d) The approximate amount or volume of specialized forest products to be harvested or transported;

(e)(i) For validated permits only, the parcel number or the legal description of the property from which the specialized forest products are to be harvested or transported;

(ii) For verifiable permits only:

(A) The parcel number for where the harvesting is to occur, unless the owner of the parcel actually lives at the parcel and the parcel's boundaries comprise an area one acre in size or smaller;

(B) The address of the property where the harvesting is to occur if the owner of the property lives at the parcel and the parcel's boundaries comprise an area less than one acre;

(C) The name of the county where the harvesting is to occur; and

(D) An accurate report or statement from the county assessor of the county where the specialized forest products are to be harvested that provides clear evidence that the permittor named on the verifiable permit is the owner of the parcel named on the permit;

(f) A description by local landmarks of where the harvesting is to occur, or from where the specialized forest products are to be transported;

(g) For specialty wood, a copy of a map or aerial photograph, with defined permitted boundaries, included as an attachment to the permit;

(h)(i) For validated permits, a copy of a valid picture identification of the permittee on the copy of the permit form that is presented to the sheriff; and

(ii) For verifiable permits, the unique number assigned to a valid state identification document for both the permittee and permittor; and

(i) The details of any other condition or limitation which the permittor may specify.

(3) For permits intended to satisfy the requirements of RCW 76.48.031 relating to the sale of huckleberries, the permit:

(a) Must, in addition to the requirements of subsection (2) of this section, also contain information relating to where the huckleberries were, or plan to be, harvested, and the approximate amount of huckleberries that are going to be offered for sale; and

(b) Must include a statement designed to inform the possessor that permission from the landowner is still required prior to the harvesting of huckleberries. [2009 c 245 § 9; 2008 c 191 § 2; 2005 c 401 § 2; 1995 c 366 § 4; 1979 ex.s. c 94 § 4; 1977 ex.s. c 147 § 4; 1967 ex.s. c 47 § 6. Formerly RCW 76.48.050.]

Finding—Intent—2009 c 245: See note following RCW 76.48.011.

Severability—1995 c 366: See note following RCW 76.48.020.

76.48.085 Recodified as RCW 76.48.111. See Supplementary Table of Disposition of Former RCW Sections, this volume.

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

76.48.091 Acceptance and validation of permits—Authorized agents. (1) County sheriffs may contract with other entities to serve as authorized agents to accept and validate permits under RCW 76.48.061. Entities that a county sheriff may contract with include the department, the United States forest service, the bureau of land management, local police departments, and other entities as decided upon by the county sheriffs' departments.

(2) An entity that contracts with a county sheriff to serve as an authorized agent under this section may make reasonable efforts to verify the information provided on the permit form such as the legal description or parcel number of the area where harvesting is to occur.

(3) All processes and requirements applicable to county sheriffs under RCW 76.48.061 also apply to entities contracted under this section. [2009 c 245 § 10; 1995 c 366 § 15. Formerly RCW 76.48.062.]

Finding—Intent—2009 c 245: See note following RCW 76.48.011.

Severability—1995 c 366: See note following RCW 76.48.020.

76.48.094 Recodified as RCW 76.48.101. See Supplementary Table of Disposition of Former RCW Sections, this volume.

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

76.48.098 Recodified as RCW 76.48.121. See Supplementary Table of Disposition of Former RCW Sections, this volume.

76.48.100 Recodified as RCW 76.48.211. See Supplementary Table of Disposition of Former RCW Sections, this volume.

76.48.101 Possession of specialized forest products by first or secondary buyer—Display of documentation—Specialty wood processors. (1) It is unlawful for any first or secondary specialized forest products buyer, or for any other person, to purchase, take possession of, or retain specialized forest products subsequent to the harvesting and prior to the retail sale of the products unless the supplier of the product displays:

(a) An apparently valid permit required by RCW 76.48.031;

(b) A true copy of an apparently valid permit; or

(c) When applicable:

(i) A bill of lading, authorization, sales invoice, or a government-issued documentation, prepared consistent with RCW 76.48.031 indicating the true origin of the specialized forest products as being outside of Washington;

(ii) If the products were harvested within the operational area defined by a valid forest practices application or notification under chapter 76.09 RCW, a sequentially numbered load ticket generated by the landowner or the landowner's agent that includes, at a minimum, all information required on a bill of lading and the forest practices application number; or

(iii) A statement claiming the products offered for sale are otherwise exempt from the permit requirements of this chapter under RCW 76.48.211.

(2) In addition to the requirements of RCW 76.48.111, specialty wood processors are required to ensure that a bill of lading, authorization, or sales invoice accompanies all specialty wood upon the receipt of the specialty wood into or the shipping of the specialty wood out of the property of the specialty wood processor. [2009 c 245 § 11; 2005 c 401 § 7; 1979 ex.s. c 94 § 9; 1977 ex.s. c 147 § 11. Formerly RCW 76.48.094.]

Finding—Intent—2009 c 245: See note following RCW 76.48.011.

76.48.110 Recodified as RCW 76.48.201. See Supplementary Table of Disposition of Former RCW Sections, this volume.

76.48.111 Specialized forest products buyers and huckleberry buyers—Required records. (1)(a) First and secondary specialized forest products buyers and huckleberry buyers are required to record:

(i) If the person is a first specialized forest product buyer, the permit number or, if applicable, a sequentially numbered load ticket generated by the landowner or the landowner's agent that includes, at a minimum, all information required on a bill of lading and the forest practices application or notification number if the seller claims the specialized forest product in question is exempt from the permit requirements of this chapter, as provided in RCW 76.48.211, due to its harvest within the operational area defined by a valid forest practices application or notification under chapter 76.09 RCW;

(ii) Whether or not the products were accompanied by a bill of lading, authorization, or sales invoice;

(iii) The type of specialized forest product purchased, and, if applicable, an indication that huckleberries were purchased;

(iv) The name of the seller;

(v) The amount of specialized forest product or huckleberries purchased;

(vi) The date of delivery;

(vii) The name of the person driving the vehicle in which the specialized forest products were transported to the buyer, as confirmed by a visual inspection of the applicable driver's license, unless the buyer has previously recorded the driver's information in an accessible record; and

(viii) Except for transactions involving Christmas trees, the license plate number of the vehicle in which the specialized forest products were transported to the buyer.

(b) First and secondary specialized forest products buyers shall keep a record of this information, along with any accompanying bill of lading, sales invoice, or authorization, for a period of one year from the date of purchase and must make the records available for inspection upon demand by enforcement officials authorized under RCW 76.48.181 to enforce this chapter.

(c) In lieu of a permit number or forest practices identification and load ticket number, the buyer may, when applicable, note that the seller claims that the products offered for sale are exempt from the permit requirements of this chapter under RCW 76.48.211, or were lawfully transported into Washington from out of state. All other information required by this section must be recorded.

(2) This section does not apply to buyers of specialized forest products at the retail sales level.

(3) Records of buyers of specialized forest products and huckleberries collected under this section may be made available to colleges and universities for the purpose of research. [2009 c 245 § 12; 2008 c 191 § 4; 2005 c 401 § 6; 2000 c 11 § 19; 1995 c 366 § 14. Formerly RCW 76.48.085.]

Finding—Intent—2009 c 245: See note following RCW 76.48.011.

Severability—1995 c 366: See note following RCW 76.48.020.

76.48.120 Recodified as RCW 76.48.141. See Supplementary Table of Disposition of Former RCW Sections, this volume.

76.48.121 Display of master license. Every first or secondary specialized forest products buyer purchasing specialty wood and specialty wood processor shall prominently display a master license issued by the department of licensing under RCW 19.02.070 or a copy of the license at each location where the buyer or processor receives specialty wood if the first or secondary specialized forest products buyer or specialty wood processor is required to possess a license incorporated into the master license system created in chapter 19.02 RCW. [2009 c 245 § 13; 2005 c 401 § 9; 1995 c 366 § 9; 1979 ex.s. c 94 § 11; 1977 ex.s. c 147 § 13. Formerly RCW 76.48.098.]

Finding—Intent—2009 c 245: See note following RCW 76.48.011.

Severability—1995 c 366: See note following RCW 76.48.020.

76.48.130 Recodified as RCW 76.48.151. See Supplementary Table of Disposition of Former RCW Sections, this volume.

76.48.131 Unlawful acts. It is unlawful for any person to:

(1) Sell or attempt to sell huckleberries, or harvest, possess, or transport specialized forest products in violation of RCW 76.48.031;

(2) Engage in activities or phases of harvesting specialized forest products not authorized by a permit under this chapter;

(3) Harvest specialized forest products in any lesser quantities than those specified in RCW 76.48.031 without first obtaining permission from the landowner or the landowner's authorized agent or representative; or

(4) Harvest huckleberries in any amount using a rake, mechanical device, or any other method that damages the huckleberry bush. [2009 c 245 § 14; 2007 c 392 § 4; 1995 c 366 § 2; 1979 ex.s. c 94 § 2; 1977 ex.s. c 147 § 2; 1967 ex.s. c 47 § 4. Formerly RCW 76.48.030.]

Finding—Intent—2009 c 245: See note following RCW 76.48.011.

Severability—1995 c 366: See note following RCW 76.48.020.

76.48.140 Recodified as RCW 76.48.171. See Supplementary Table of Disposition of Former RCW Sections, this volume.

76.48.141 False, fraudulent, forged, or stolen specialized forest products permit, sales invoice, bill of lading, etc.—Penalty. (1) It is unlawful for any person, upon official inquiry, investigation, or other authorized proceedings, to:

(a) Offer as genuine any paper, document, or other instrument in writing purporting to be a specialized forest products permit, true copy of a permit, authorization, sales invoice, bill of lading, or other document required under this chapter; or

(b) To make any representation of authority to possess or conduct harvesting or transporting of specialized forest products, or to conduct the sale of huckleberries, with knowledge that the representation of authority is in any manner false, fraudulent, forged, or stolen.

(2) It is unlawful for any person to produce a document for a first or secondary specialized forest products buyer purporting to be a true and genuine permit when delivering or attempting to deliver a specialized forest product with knowledge that the document is in any manner false, fraudulent, forged, or stolen.

(3) Any person who knowingly or intentionally violates this section is guilty of a class C felony punishable by imprisonment in a state correctional institution for a maximum term fixed by the court of not more than five years or by a fine of not more than five thousand dollars, or by both imprisonment and fine. [2009 c 245 § 15; 2008 c 191 § 7; 2003 c 53 § 373; 1995 c 366 § 12; 1979 ex.s. c 94 § 14; 1977 ex.s. c 147 § 9; 1967 ex.s. c 47 § 13. Formerly RCW 76.48.120.]

Finding—Intent—2009 c 245: See note following RCW 76.48.011.

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

Severability—1995 c 366: See note following RCW 76.48.020.

76.48.150 Recodified as RCW 76.48.231. See Supplementary Table of Disposition of Former RCW Sections, this volume.

76.48.151 Penalties—Affirmative defense. (1) Except as provided in RCW 76.48.141, a person who violates a provision of this chapter is guilty of a gross misdemeanor punishable by a fine of not more than one thousand dollars, imprisonment in the county jail for a term not to exceed one year, or by both a fine and imprisonment.

(2) In any prosecution for a violation of this chapter's requirements to obtain or possess a specialized forest products permit, true copy, bill of lading, authorization, or sales invoice, it is an affirmative defense, if established by the defendant by a preponderance of the evidence, that:

(a) The specialized forest products were harvested from the defendant's own land; or

(b) The specialized forest products were harvested with the permission of the landowner. [2009 c 245 § 16; 2007 c 392 § 1; 1995 c 366 § 13; 1977 ex.s. c 147 § 10; 1967 ex.s. c 47 § 14. Formerly RCW 76.48.130.]

Finding—Intent—2009 c 245: See note following RCW 76.48.011.

Severability—1995 c 366: See note following RCW 76.48.020.

76.48.161 Multiple convictions for violating RCW 76.48.141 or 76.48.151—Suspension of privileges to obtain a specialized forest products permit. (1) The court presiding over the conviction of any person for a violation of RCW 76.48.141 or 76.48.151 who has been convicted of violating either RCW 76.48.141 or 76.48.151 at least two other times shall order up to a three-year suspension of that person's privilege to obtain a specialized forest products permit under this chapter.

(2) If a court issues a suspension under this section after a conviction involving the misuse of a permit with a specified permittor, the legislature requests that the court notify the permittor listed on the permit of the suspension.

(3) Nothing in this section limits the ability of a court to order the suspension of any privileges related to specialized forest products as a condition of probation regardless of whether the person has any past convictions. [2009 c 245 § 17.]

Finding—Intent—2009 c 245: See note following RCW 76.48.011.

76.48.171 Disposition of fines. All fines collected for violations of this chapter shall be paid into the general fund of the county treasury of the county in which the violation occurred and distributed equally among the district courts in the county, the county sheriff's office, and the state treasurer. The portion of the revenue provided to the state treasurer must be distributed to the specialized forest products outreach and education account created in RCW 76.48.251. [2009 c 245 § 18; 2005 c 401 § 12; 1977 ex.s. c 147 § 15. Formerly RCW 76.48.140.]

Finding—Intent—2009 c 245: See note following RCW 76.48.011.

76.48.181 Agencies responsible for enforcement of chapter. (1) Primary enforcement responsibility of this chapter belongs with county sheriffs. However, other entities that may enforce this chapter include:

(a) The department;

(b) The Washington state patrol;

(c) County or municipal police forces;

(d) Authorized personnel of the United States forest service; and

(e) Authorized personnel of the department of fish and wildlife.

(2) The legislature encourages county sheriffs' offices to enter into interlocal agreements with these other agencies in order to receive additional assistance with their enforcement responsibilities. [2009 c 245 § 19; 1995 c 366 § 3; 1994 c 264 § 51; 1988 c 36 § 49; 1979 ex.s. c 94 § 3; 1977 ex.s. c 147 § 3; 1967 ex.s. c 47 § 5. Formerly RCW 76.48.040.]

Finding—Intent—2009 c 245: See note following RCW 76.48.011.

Severability—1995 c 366: See note following RCW 76.48.020.

76.48.191 Detention of specialized forest products and documentation. (1) A law enforcement officer may take into custody and detain for a reasonable time any specialized forest products, authorizations, sales invoices, bills of lading, other documents, and vehicles in which the specialized forest products were transported if, under official inquiry, investigation, or other authorized proceeding regarding specialized forest products not covered by a valid permit or other acceptable document as provided in this chapter, the inspecting law enforcement officer has probable cause to believe that the specialized forest products were obtained in violation of this chapter until the true origin of the specialized forest products can be determined.

(2) A law enforcement officer may retain a specialized forest products permit, true copy of a permit, authorization, sales invoice, bill of lading, or other document required under this chapter if the officer reasonably suspects that the document is forged in violation of RCW 76.48.141, fraudulent, or stolen, until the authenticity of the document can be verified.

(3)(a) If no arrest is made at the conclusion of the official inquiry, investigation, or other authorized proceeding for a violation of this chapter or another state law, all materials detained under this section must be returned to the person or persons from whom the materials were taken.

(b)(i) If an arrest does follow the inquiry, investigation, or authorized proceeding, and the law enforcement officer has probable cause to believe that a person is selling or attempting to sell huckleberries, or is harvesting, in possession of, or transporting specialized forest products in violation of this chapter, any specialized forest products or huckleberries found at the time of arrest may be seized.

(ii) If the specialized forest product triggering the arrest is specialty wood, the law enforcement officer may also seize any equipment, vehicles, tools, or paperwork associated with the arrest.

(c) Materials seized under this chapter are subject to the provisions of RCW 76.48.201. [2009 c 245 § 20.]

Finding—Intent—2009 c 245: See note following RCW 76.48.011.

76.48.200 Recodified as RCW 76.48.241. See Supplementary Table of Disposition of Former RCW Sections, this volume.

76.48.201 Protection of items seized under RCW 76.48.191—Disposition of items. (1)(a) Reasonable protection must be provided for any equipment, vehicles, tools, paperwork, huckleberries, or specialized forest products

seized under RCW 76.48.191 during the period of adjudication unless the court before which the arrested person is ordered to appear orders the disposal of any or all of the seized materials.

(b) Given the perishable nature of huckleberries and specialized forest products, the seizing agency may sell the product at fair market value and retain all proceeds until a final disposition of the case has been reached.

(2) Upon any disposition of the case by the court, the court shall:

(a) Make a reasonable effort to return all materials seized under RCW 76.48.191 to its lawful owner or owners; or

(b) Order the disposal of or return of any or all materials seized under this section, including tools, vehicles, equipment, paperwork, or specialized forest products.

(3) If the court orders the disposal of seized materials, it may:

(a) Pay the proceeds of any sale of seized specialized forest products or huckleberries, less any reasonable expenses of the sale, to the lawful owner; or

(b) Pay the proceeds of any sale of seized tools, equipment, or vehicles, less any reasonable expenses of the sale or, if applicable, towards any outstanding court costs, and then to the lawful owner or owners.

(4) If, for any reason, the proceeds of any sale of materials seized under this section cannot be provided to the lawful owner, the proceeds of the sale, less reasonable expenses relating to the sale, shall be paid to the treasurer of the county in which the violation occurred for deposit into the county general fund and for distribution equally among the district courts in the county, the county sheriff's office, and the state treasurer. The portion of the revenue provided to the state treasurer must be distributed to the specialized forest products outreach and education account created in RCW 76.48.251.

(5) The owner or owners of materials seized under RCW 76.48.191 must be offered an opportunity to appeal an order for the disposal of the seized materials.

(6) The return of materials seized under RCW 76.48.191, or the payment of the proceeds of any sale of products seized to the owner, shall not preclude the court from imposing any fine or penalty upon the violator for the violation of the provisions of this chapter. [2009 c 245 § 21; 2008 c 191 § 6; 2005 c 401 § 11; 1995 c 366 § 11; 1979 ex.s. c 94 § 13; 1977 ex.s. c 147 § 8; 1967 ex.s. c 47 § 12. Formerly RCW 76.48.110.]

Finding—Intent—2009 c 245: See note following RCW 76.48.011.

Severability—1995 c 366: See note following RCW 76.48.020.

76.48.210 Recodified as RCW 76.48.221. See Supplementary Table of Disposition of Former RCW Sections, this volume.

76.48.211 Exemptions. Except as otherwise conditioned, this chapter does not apply to:

(1) Nursery grown products.

(2) The following products when harvested within the operational areas as defined by a valid forest practices application or notification under chapter 76.09 RCW, and when the person harvesting is able to provide a sequentially numbered load ticket provided by the landowner or the landowner's agent that includes, at a minimum, all information required on a bill of lading and the forest practices application or notification number, or under a contract or permit issued by an agency of the United States government:

(a) Logs;

(b) Speciality wood;

(c) Cut or picked evergreen foliage;

(d) Poles;

(e) Pilings; or

(f) Other major forest products from which substantially all of the limbs and branches have been removed.

(3) Noncommercial harvest, transportation, or possession by the landowner, the landowner's agent, representative, or lessee of specialized forest products originating from property belonging to the landowner.

(4) Harvest, transportation, or possession of specialized forest products by:

(a) A governmental entity or the entity's agent for the purposes of clearing or maintaining the governmental entity's right-of-way or easement; or

(b) A public or regulated utility or the utility's agent for the purpose of clearing or maintaining the utility's right-of-way or easement. [2009 c 245 § 22; 2005 c 401 § 10; 1995 c 366 § 10; 1979 ex.s. c 94 § 12; 1977 ex.s. c 147 § 7; 1967 ex.s. c 47 § 11. Formerly RCW 76.48.100.]

Finding—Intent—2009 c 245: See note following RCW 76.48.011.

Severability—1995 c 366: See note following RCW 76.48.020.

76.48.221 Effect of RCW 76.48.031 with respect to huckleberries. (1) Nothing in RCW 76.48.031 creates a requirement that a specialized forest products permit is required for an individual to harvest, possess, or transport huckleberries.

(2) Compliance with RCW 76.48.031 allows an individual to sell, or offer for sale, raw or unprocessed huckleberries. Possession of a specialized forest products permit does not create a right or privilege to harvest huckleberries. Huckleberries may be harvested only with the permission of the landowner and under the terms and conditions established between the landowner and the harvester. [2009 c 245 § 23; 2008 c 191 § 1. Formerly RCW 76.48.210.]

Finding—Intent—2009 c 245: See note following RCW 76.48.011.

76.48.231 Department to develop educational material. (1) Subject to the availability of funds in the specialized forest products outreach and education account established under RCW 76.48.251, the department shall develop educational material, including printed information, for law enforcement, forest landowners, and specialized forest products permittees, buyers, and processors specific to this chapter.

(2) The department is encouraged to foster partnerships with federal agencies, other state agencies, universities, local governments, and private interests in order to minimize educational and outreach expenses. [2009 c 245 § 24; 2005 c 401 § 13. Formerly RCW 76.48.150.]

Finding—Intent—2009 c 245: See note following RCW 76.48.011.

76.48.241 Assistance and training for minority groups. (1) Minority groups have long been participants in the specialized forest products and huckleberry harvesting industry. The legislature encourages agencies serving minority communities, community-based organizations, refugee centers, social service agencies, agencies and organizations with expertise in the specialized forest products and huckleberry harvesting industries, and other interested groups to work cooperatively to accomplish the following purposes:

(a) To provide assistance and make referrals on translation services and to assist in translating educational materials, laws, and rules regarding specialized forest products and huckleberries;

(b) To hold clinics to teach techniques for effective picking; and

(c) To work with both minority and nonminority permittees in order to protect resources and foster understanding between minority and nonminority permittees.

(2) To the extent practicable within their existing resources, the department, the state commission on Asian Pacific American affairs created in RCW 43.117.030, and the state commission on Hispanic affairs created in RCW 43.115.020 are encouraged to coordinate efforts under this chapter. [2009 c 245 § 25; 2008 c 191 § 8; 1995 c 366 § 17. Formerly RCW 76.48.200.]

Finding—Intent—2009 c 245: See note following RCW 76.48.011.

Severability—1995 c 366: See note following RCW 76.48.020.

76.48.251 Specialized forest products outreach and education account. The specialized forest products outreach and education account is created in the custody of the state treasurer. All receipts from RCW 76.48.171 and 76.48.201, any legislative appropriations, private donations, or any other private or public source directed to the account must be deposited in the account. Expenditures from the account may only be used by the department for funding activities under RCW 76.48.231 and 76.48.241. Only the commissioner of public lands or the commissioner's designee may authorize expenditures from the account. The account is subject to the allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. [2009 c 245 § 26.]

Finding—Intent—2009 c 245: See note following RCW 76.48.011.

76.48.900 Recodified as RCW 76.48.905. See Supplementary Table of Disposition of Former RCW Sections, this volume.

76.48.901 Decodified. See Supplementary Table of Disposition of Former RCW Sections, this volume.

76.48.902 Recodified as RCW 76.48.906. See Supplementary Table of Disposition of Former RCW Sections, this volume.

76.48.905 Severability—1967 ex.s. c 47. If any section, provision, or part thereof of this chapter shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the chapter as a whole, or any section, provision, or part thereof not adjudged invalid or unconstitutional. [1967 ex.s. c 47 § 15. Formerly RCW 76.48.900.]

76.48.906 Severability—1979 ex.s. c 94. If any provision of this act or this chapter or its application to any person or circumstance is held invalid, the remainder of the act or this chapter or the application of the provision to other persons or circumstances is not affected. [2009 c 245 § 27; 1979 ex.s. c 94 § 17. Formerly RCW 76.48.902.]

76.48.907 Saving—1967 ex.s. c 47. This chapter is not intended to repeal, supersede, or modify any provision of existing law. [2009 c 245 § 28; 1967 ex.s. c 47 § 16. Formerly RCW 76.48.910.]

76.48.910 Recodified as RCW 76.48.907. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Title 77

FISH AND WILDLIFE

Chapters

77.08 General terms defined.
77.12 Powers and duties.
77.15 Fish and wildlife enforcement code.
77.32 Licenses.
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Chapter 77.08 RCW
GENERAL TERMS DEFINED

Sections

77.08.010 Definitions.
77.08.900 Construction—Title applicable to state registered domestic partnerships—2009 c 521. *(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*

77.08.010 Definitions. The definitions in this section apply throughout this title or rules adopted under this title unless the context clearly requires otherwise.

(1) "Angling gear" means a line attached to a rod and reel capable of being held in hand while landing the fish or a hand-held line operated without rod or reel.

(2) "Aquatic invasive species" means any invasive, prohibited, regulated, unregulated, or unlisted aquatic animal or plant species as defined under subsections (3), (28), (40), (44), (58), and (59) of this section, aquatic noxious weeds as defined under RCW 17.26.020(5)(c), and aquatic nuisance species as defined under RCW 77.60.130(1).

(3) "Aquatic plant species" means an emergent, submersed, partially submersed, free-floating, or floating-leaving plant species that grows in or near a body of water or wetland.

(4) "Bag limit" means the maximum number of game animals, game birds, or game fish which may be taken, caught, killed, or possessed by a person, as specified by rule of the commission for a particular period of time, or as to size, sex, or species.

(5) "Closed area" means a place where the hunting of some or all species of wild animals or wild birds is prohibited.

(6) "Closed season" means all times, manners of taking, and places or waters other than those established by rule of the commission as an open season. "Closed season" also means all hunting, fishing, taking, or possession of game animals, game birds, game fish, food fish, or shellfish that do not conform to the special restrictions or physical descriptions established by rule of the commission as an open season or that have not otherwise been deemed legal to hunt, fish, take, harvest, or possess by rule of the commission as an open season.

(7) "Closed waters" means all or part of a lake, river, stream, or other body of water, where fishing or harvesting is prohibited.

(8) "Commercial" means related to or connected with buying, selling, or bartering.

(9) "Commission" means the state fish and wildlife commission.

(10) "Concurrent waters of the Columbia river" means those waters of the Columbia river that coincide with the Washington-Oregon state boundary.

(11) "Contraband" means any property that is unlawful to produce or possess.

(12) "Deleterious exotic wildlife" means species of the animal kingdom not native to Washington and designated as dangerous to the environment or wildlife of the state.

(13) "Department" means the department of fish and wildlife.

(14) "Director" means the director of fish and wildlife.

(15) "Endangered species" means wildlife designated by the commission as seriously threatened with extinction.

(16) "Ex officio fish and wildlife officer" means a commissioned officer of a municipal, county, state, or federal agency having as its primary function the enforcement of criminal laws in general, while the officer is in the appropriate jurisdiction. The term "ex officio fish and wildlife officer" includes special agents of the national marine fisheries service, state parks commissioned officers, United States fish and wildlife special agents, department of natural resources enforcement officers, and United States forest service officers, while the agents and officers are within their respective jurisdictions.

(17) "Fish" includes all species classified as game fish or food fish by statute or rule, as well as all fin fish not currently classified as food fish or game fish if such species exist in state waters. The term "fish" includes all stages of development and the bodily parts of fish species.

(18) "Fish and wildlife officer" means a person appointed and commissioned by the director, with authority to enforce this title and rules adopted pursuant to this title, and other statutes as prescribed by the legislature. Fish and wildlife officer includes a person commissioned before June 11, 1998, as a wildlife agent or a fisheries patrol officer.

(19) "Fish broker" means a person whose business it is to bring a seller of fish and shellfish and a purchaser of those fish and shellfish together.

(20) "Fishery" means the taking of one or more particular species of fish or shellfish with particular gear in a particular geographical area.

(21) "Freshwater" means all waters not defined as saltwater including, but not limited to, rivers upstream of the river mouth, lakes, ponds, and reservoirs.

(22) "Fur-bearing animals" means game animals that shall not be trapped except as authorized by the commission.

(23) "Game animals" means wild animals that shall not be hunted except as authorized by the commission.

(24) "Game birds" means wild birds that shall not be hunted except as authorized by the commission.

(25) "Game farm" means property on which wildlife is held or raised for commercial purposes, trade, or gift. The term "game farm" does not include publicly owned facilities.

(26) "Game reserve" means a closed area where hunting for all wild animals and wild birds is prohibited.

(27) "Illegal items" means those items unlawful to be possessed.

(28) "Invasive species" means a plant species or a nonnative animal species that either:

(a) Causes or may cause displacement of, or otherwise threatens, native species in their natural communities;

(b) Threatens or may threaten natural resources or their use in the state;

(c) Causes or may cause economic damage to commercial or recreational activities that are dependent upon state waters; or

(d) Threatens or harms human health.

(29) "License year" means the period of time for which a recreational license is valid. The license year begins April 1st, and ends March 31st.

(30) "Limited-entry license" means a license subject to a license limitation program established in chapter 77.70 RCW.

(31) "Money" means all currency, script, personal checks, money orders, or other negotiable instruments.

(32) "Nonresident" means a person who has not fulfilled the qualifications of a resident.

(33) "Offshore waters" means marine waters of the Pacific Ocean outside the territorial boundaries of the state, including the marine waters of other states and countries.

(34) "Open season" means those times, manners of taking, and places or waters established by rule of the commission for the lawful hunting, fishing, taking, or possession of game animals, game birds, game fish, food fish, or shellfish that conform to the special restrictions or physical descriptions established by rule of the commission or that have otherwise been deemed legal to hunt, fish, take, harvest, or possess by rule of the commission. "Open season" includes the first and last days of the established time.

(35) "Owner" means the person in whom is vested the ownership dominion, or title of the property.

(36) "Person" means and includes an individual; a corporation; a public or private entity or organization; a local, state,

or federal agency; all business organizations, including corporations and partnerships; or a group of two or more individuals acting with a common purpose whether acting in an individual, representative, or official capacity.

(37) "Personal property" or "property" includes both corporeal and incorporeal personal property and includes, among other property, contraband and money.

(38) "Personal use" means for the private use of the individual taking the fish or shellfish and not for sale or barter.

(39) "Predatory birds" means wild birds that may be hunted throughout the year as authorized by the commission.

(40) "Prohibited aquatic animal species" means an invasive species of the animal kingdom that has been classified as a prohibited aquatic animal species by the commission.

(41) "Protected wildlife" means wildlife designated by the commission that shall not be hunted or fished.

(42) "Raffle" means an activity in which tickets bearing an individual number are sold for not more than twenty-five dollars each and in which a permit or permits are awarded to hunt or for access to hunt big game animals or wild turkeys on the basis of a drawing from the tickets by the person or persons conducting the raffle.

(43) "Recreational and commercial watercraft" includes the boat, as well as equipment used to transport the boat, and any auxiliary equipment such as attached or detached outboard motors.

(44) "Regulated aquatic animal species" means a potentially invasive species of the animal kingdom that has been classified as a regulated aquatic animal species by the commission.

(45) "Resident" means:

(a) A person who has maintained a permanent place of abode within the state for at least ninety days immediately preceding an application for a license, has established by formal evidence an intent to continue residing within the state, and who is not licensed to hunt or fish as a resident in another state; and

(b) A person age eighteen or younger who does not qualify as a resident under (a) of this subsection, but who has a parent that qualifies as a resident under (a) of this subsection.

(46) "Retail-eligible species" means commercially harvested salmon, crab, and sturgeon.

(47) "Saltwater" means those marine waters seaward of river mouths.

(48) "Seaweed" means marine aquatic plant species that are dependent upon the marine aquatic or tidal environment, and exist in either an attached or free floating form, and includes but is not limited to marine aquatic plants in the classes Chlorophyta, Phaeophyta, and Rhodophyta.

(49) "Senior" means a person seventy years old or older.

(50) "Shellfish" means those species of marine and freshwater invertebrates that have been classified and that shall not be taken except as authorized by rule of the commission. The term "shellfish" includes all stages of development and the bodily parts of shellfish species.

(51) "State waters" means all marine waters and fresh waters within ordinary high water lines and within the territorial boundaries of the state.

(52) "To fish," "to harvest," and "to take," and their derivatives means an effort to kill, injure, harass, or catch a fish or shellfish.

(53) "To hunt" and its derivatives means an effort to kill, injure, capture, or harass a wild animal or wild bird.

(54) "To process" and its derivatives mean preparing or preserving fish, wildlife, or shellfish.

(55) "To trap" and its derivatives means a method of hunting using devices to capture wild animals or wild birds.

(56) "Trafficking" means offering, attempting to engage, or engaging in sale, barter, or purchase of fish, shellfish, wildlife, or deleterious exotic wildlife.

(57) "Unclaimed" means that no owner of the property has been identified or has requested, in writing, the release of the property to themselves nor has the owner of the property designated an individual to receive the property or paid the required postage to effect delivery of the property.

(58) "Unlisted aquatic animal species" means a nonnative animal species that has not been classified as a prohibited aquatic animal species, a regulated aquatic animal species, or an unregulated aquatic animal species by the commission.

(59) "Unregulated aquatic animal species" means a nonnative animal species that has been classified as an unregulated aquatic animal species by the commission.

(60) "Wholesale fish dealer" means a person who, acting for commercial purposes, takes possession or ownership of fish or shellfish and sells, barters, or exchanges or attempts to sell, barter, or exchange fish or shellfish that have been landed into the state of Washington or entered the state of Washington in interstate or foreign commerce.

(61) "Wild animals" means those species of the class Mammalia whose members exist in Washington in a wild state and the species Rana catesbeiana (bullfrog). The term "wild animal" does not include feral domestic mammals or old world rats and mice of the family Muridae of the order Rodentia.

(62) "Wild birds" means those species of the class Aves whose members exist in Washington in a wild state.

(63) "Wildlife" means all species of the animal kingdom whose members exist in Washington in a wild state. This includes but is not limited to mammals, birds, reptiles, amphibians, fish, and invertebrates. The term "wildlife" does not include feral domestic mammals, old world rats and mice of the family Muridae of the order Rodentia, or those fish, shellfish, and marine invertebrates classified as food fish or shellfish by the director. The term "wildlife" includes all stages of development and the bodily parts of wildlife members.

(64) "Youth" means a person fifteen years old for fishing and under sixteen years old for hunting. [2009 c 333 § 12; 2008 c 277 § 2. Prior: 2007 c 350 § 2; 2007 c 254 § 1; 2005 c 104 § 1; 2003 c 387 § 1; 2002 c 281 § 2; 2001 c 253 § 10; 2000 c 107 § 207; 1998 c 190 § 111; 1996 c 207 § 2; 1993 sp.s. c 2 § 66; 1989 c 297 § 7; 1987 c 506 § 11; 1980 c 78 § 9; 1955 c 36 § 77.08.010; prior: 1947 c 275 § 9; Rem. Supp. 1947 § 5992-19.]

Alphabetization—2008 c 277: "The code reviser is directed to put the defined terms in RCW 77.08.010 in alphabetical order." [2008 c 277 § 1.]

Purpose—2002 c 281: "The legislature recognizes the potential economic and environmental damage that can occur from the introduction of invasive aquatic species. The purpose of this act is to increase public awareness of invasive aquatic species and enhance the department of fish and wildlife's regulatory capability to address threats posed by these species." [2002 c 281 § 1.]

Intent—1996 c 207: "It is the intent of the legislature to clarify hunting and fishing laws in light of the decision in *State v. Bailey*, 77 Wn. App. 732 (1995). The fish and wildlife commission has the authority to establish hunting and fishing seasons. These seasons are defined by limiting the times, manners of taking, and places or waters for lawful hunting, fishing, or possession of game animals, game birds, or game fish, as well as by limiting the physical characteristics of the game animals, game birds, or game fish which may be lawfully taken at those times, in those manners, and at those places or waters." [1996 c 207 § 1.]

Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79: See RCW 43.300.900.

Severability—1993 sp.s. c 2: See RCW 43.300.901.

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.08.900 Construction—Title applicable to state registered domestic partnerships—2009 c 521. ***(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*** For the purposes of this title, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 183.]

Chapter 77.12 RCW
POWERS AND DUTIES

Sections

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

77.12.170 State wildlife account—Deposits. (1) There is established in the state treasury the state wildlife account which consists of moneys received from:

(a) Rentals or concessions of the department;

(b) The sale of real or personal property held for department purposes, unless the property is seized or recovered through a fish, shellfish, or wildlife enforcement action;

(c) The assessment of administrative penalties, and the sale of licenses, permits, tags, and stamps required by chapter 77.32 RCW and RCW 77.65.490, except annual resident adult saltwater and all annual razor clam and shellfish licenses, which shall be deposited into the state general fund;

(d) Fees for informational materials published by the department;

(e) Fees for personalized vehicle, Wild on Washington, and Endangered Wildlife license plates and Washington's Wildlife license plate collection as provided in chapter 46.16 RCW;

(f) Articles or wildlife sold by the director under this title;

(g) Compensation for damage to department property or wildlife losses or contributions, gifts, or grants received under RCW 77.12.320. However, this excludes fish and shellfish overages, and court-ordered restitution or donations associated with any fish, shellfish, or wildlife enforcement action, as such moneys must be deposited pursuant to RCW 77.15.425;

(h) Excise tax on anadromous game fish collected under chapter 82.27 RCW;

(i) The department's share of revenues from auctions and raffles authorized by the commission; and

(j) The sale of watchable wildlife decals under RCW 77.32.560.

(2) State and county officers receiving any moneys listed in subsection (1) of this section shall deposit them in the state treasury to be credited to the state wildlife account. [2009 c 333 § 13. Prior: 2005 c 418 § 3; 2005 c 225 § 4; 2005 c 224 § 4; 2005 c 42 § 4; 2004 c 248 § 4; 2003 c 317 § 3; 2001 c 253 § 15; 2000 c 107 § 216; prior: 1998 c 191 § 38; 1998 c 87 § 2; 1996 c 101 § 7; 1989 c 314 § 4; 1987 c 506 § 25; 1984 c 258 § 334; prior: 1983 1st ex.s. c 8 § 2; 1983 c 284 § 1; 1981 c 310 § 2; 1980 c 78 § 30; 1979 c 56 § 1; 1973 1st ex.s. c 200 § 12 (Referendum Bill No. 33); 1969 ex.s. c 199 § 33; 1955 c 36 § 77.12.170; prior: 1947 c 275 § 27; Rem. Supp. 1947 § 5992-37.]

Findings—2003 c 317: See note following RCW 77.32.560.

Effective date—1998 c 191: See note following RCW 77.32.400.

Effective date—1998 c 87: See note following RCW 77.32.380.

Findings—1996 c 101: See note following RCW 77.32.530.

Finding—1989 c 314: See note following RCW 77.15.098.

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

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

Intent—1984 c 258: See note following RCW 3.34.130.

Findings—Intent—1983 c 284: See note following RCW 82.27.020.

Effective dates—1981 c 310: "(1) Sections 9 and 10 of this act are necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1981.

(2) Section 13 of this act shall take effect on May 1, 1982.

(3) Sections 8, 11, 12, and 14 of this act shall take effect on July 1, 1982.

(4) All other sections of this act shall take effect on January 1, 1982." [1981 c 310 § 32.]

Legislative intent—1981 c 310: "The legislature finds that abundant deer and elk populations are in the best interest of the state, and for many reasons the state's deer and elk populations have apparently declined. The legislature further finds that antlerless deer and elk seasons have been an issue of great controversy throughout the state, and that antlerless deer and elk seasons may contribute to a further decline in the state's deer and elk populations." [1981 c 310 § 1.]

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.184 Deposit of moneys from various activities—Production of regulation booklets. (1) The department shall deposit all moneys received from the following activities into the state wildlife account created in RCW 77.12.170:

(a) The sale of interpretive, recreational, historical, educational, and informational literature and materials;

(b) The sale of advertisements in regulation pamphlets and other appropriate mediums; and

(c) Enrollment fees in department-sponsored educational training events.

(2) Moneys collected under subsection (1) of this section shall be spent primarily for producing regulation booklets for users and for the development, production, reprinting, and distribution of informational and educational materials. The department may also spend these moneys for necessary expenses associated with training activities, and other activities as determined by the director.

(3) Regulation pamphlets may be subsidized through appropriate advertising, but must be made available free of charge to the users.

(4) The director may enter into joint ventures with other agencies and organizations to generate revenue for providing public information and education on wildlife and hunting and fishing rules. [2009 c 333 § 31; 2000 c 252 § 1.]

77.12.190 Diversion of wildlife account moneys prohibited. Moneys in the state wildlife account created in RCW 77.12.170 may be used only for the purposes of this title, including the payment of principal and interest on bonds issued for capital projects. [2009 c 333 § 32; 1991 sp.s. c 31 § 17; 1987 c 506 § 27; 1980 c 78 § 34; 1955 c 36 § 77.12.190. Prior: 1947 c 275 § 28; Rem. Supp. 1947 § 5992-38.]

Severability—1991 sp.s. c 31: See RCW 43.99I.900.

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.201 Counties may elect to receive an amount in lieu of taxes—County to record collections for violations of law or rules—Deposit. The legislative authority of a county may elect, by giving written notice to the director and the treasurer prior to January 1st of any year, to obtain for the following year an amount in lieu of real property taxes on game lands as provided in RCW 77.12.203. Upon the election, the county shall keep a record of all fines, forfeitures, reimbursements, and costs assessed and collected, in whole or in part, under this title for violations of law or rules adopted pursuant to this title and shall monthly remit an amount equal to the amount collected to the state treasurer for deposit in the state general fund. The election shall continue until the department is notified differently prior to January 1st of any year. [2009 c 479 § 63; 1987 c 506 § 29. Prior: 1984 c 258 § 335; 1984 c 214 § 1; 1980 c 78 § 36; 1977 ex.s. c 59 § 1; 1965 ex.s. c 97 § 2.]

Effective date—2009 c 479: See note following RCW 2.56.030.

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

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

Intent—1984 c 258: See note following RCW 3.34.130.

Effective date—1984 c 214: "This act takes effect on January 1, 1985." [1984 c 214 § 3.]

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.210 Department property—Management, sale. The director shall maintain and manage real or personal property owned, leased, or held by the department and shall control the construction of buildings, structures, and improvements in or on the property. The director may adopt rules for the operation and maintenance of the property.

The commission may authorize the director to sell, lease, convey, or grant concessions upon real or personal property under the control of the department. This includes the authority to sell timber, gravel, sand, and other materials or products from real property held by the department, and to sell or lease the department's real or personal property or grant concessions or rights-of-way for roads or utilities in the property. Oil and gas resources owned by the state which lie below lands owned, leased, or held by the department shall be offered for lease by the commissioner of public lands pursuant to chapter 79.14 RCW with the proceeds being deposited in the state wildlife account created in RCW 77.12.170: PROVIDED, That the commissioner of public lands shall condition such leases at the request of the department to protect wildlife and its habitat.

If the commission determines that real or personal property held by the department cannot be used advantageously by the department, the director may dispose of that property if it is in the public interest.

If the state acquired real property with use limited to specific purposes, the director may negotiate terms for the return of the property to the donor or grantor. Other real property shall be sold to the highest bidder at public auction. After appraisal, notice of the auction shall be published at least once a week for two successive weeks in a newspaper of general circulation within the county where the property is located at least twenty days prior to sale.

Proceeds from the sales shall be deposited in the state wildlife account created in RCW 77.12.170. [2009 c 333 §

33; 2000 c 107 § 218; 1987 c 506 § 30; 1980 c 78 § 38; 1969 ex.s. c 73 § 1; 1955 c 36 § 77.12.210. Prior: 1947 c 275 § 30; Rem. Supp. 1947 § 5992-40.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.230 Local assessments against department property. The director may pay lawful local improvement district assessments for projects that may benefit wildlife or wildlife-oriented recreation made against lands held by the state for department purposes. The payments may be made from money appropriated from the state wildlife account created in RCW 77.12.170 to the department. [2009 c 333 § 34; 1987 c 506 § 32; 1980 c 78 § 40; 1955 c 36 § 77.12.230. Prior: 1947 c 275 § 32; Rem. Supp. 1947 § 5992-42.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.240 Authority to take wildlife—Disposition. ***(Effective July 1, 2010.)*** (1) The department may authorize the removal or killing of wildlife that is destroying or injuring property, or when it is necessary for wildlife management or research.

(2) The department shall dispose of wildlife taken or possessed by them under this title in the manner determined by the director to be in the best interest of the state. Proceeds from sales shall be deposited in the state treasury to be credited to the state wildlife account created in RCW 77.12.170. [2009 c 333 § 63; 1989 c 197 § 1; 1987 c 506 § 33; 1980 c 78 § 41; 1955 c 36 § 77.12.240. Prior: 1947 c 275 § 33; Rem. Supp. 1947 § 5992-43.]

Effective date—Application—2009 c 333 §§ 53-66: See notes following RCW 77.36.010.

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.260 Repealed. ***(Effective July 1, 2010.)*** See Supplementary Table of Disposition of Former RCW Sections, this volume.

77.12.323 Special wildlife account—Investments. (1) There is established in the state wildlife account created in RCW 77.12.170 a special wildlife account. Moneys received under RCW 77.12.320 as now or hereafter amended as compensation for wildlife losses shall be deposited in the state treasury to be credited to the special wildlife account.

(2) The director may advise the state treasurer and the state investment board of a surplus in the special wildlife account above the current needs. The state investment board may invest and reinvest the surplus, as the commission deems appropriate, in an investment authorized by RCW 43.84.150 or in securities issued by the United States government as defined by RCW 43.84.080 (1) and (4). Income received from the investments shall be deposited to the credit of the special wildlife account. [2009 c 333 § 35; 1987 c 506 § 42; 1982 c 10 § 15. Prior: 1981 c 3 § 43; 1980 c 78 § 51; 1975 1st ex.s. c 207 § 2.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

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

Effective dates—Severability—1981 c 3: See notes following RCW 43.33A.010.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.380 Withdrawal of state land from lease—Actions by commissioner of public lands. Upon receipt of a request under RCW 77.12.360, the commissioner of public lands shall determine if the withdrawal would benefit the people of the state. If the withdrawal would be beneficial, the commissioner shall have the lands appraised for their lease value. Before withdrawal, the department shall transmit to the commissioner a voucher authorizing payment from the state wildlife account created in RCW 77.12.170 in favor of the fund for which the lands are held. The payment shall equal the amount of the lease value for the duration of the withdrawal. [2009 c 333 § 36; 1987 c 506 § 44; 1980 c 78 § 56; 1955 c 36 § 77.12.380. Prior: 1947 c 130 § 3; Rem. Supp. 1947 § 8136-12.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.390 Withdrawal of state land from lease—Payment. Upon receipt of a voucher under RCW 77.12.380, the commissioner of public lands shall withdraw the lands from lease. The commissioner shall forward the voucher to the state treasurer, who shall draw a warrant against the state wildlife account created in RCW 77.12.170 in favor of the fund for which the withdrawn lands are held. [2009 c 333 § 37; 1987 c 506 § 45; 1980 c 78 § 57; 1973 c 106 § 35; 1955 c 36 § 77.12.390. Prior: 1947 c 130 § 4; Rem. Supp. 1947 § 8136-13.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.475 Fish and wildlife equipment revolving account. (1) The fish and wildlife equipment revolving account is created in the custody of the state treasurer. The department must reimburse the account for all moneys expended from the account. Reimbursements may be made with moneys appropriated to the department or from other moneys otherwise available to the department. All moneys generated by the use or repair of vehicles, water vessels, and heavy equipment or generated by the sale or surplusing of vehicles, water vessels, and heavy equipment must be deposited in the account. The department's reimbursements may be prorated over the useful life of the vehicle, water vessel, or heavy equipment acquired with moneys from the account.

(2) Expenditures from the account may be used only for the purchase or lease of vehicles, water vessels, and heavy equipment, to include the payment of costs for the operation,

repair, and maintenance of the vehicles, water vessels, and heavy equipment.

(3) Only the director of fish and wildlife or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(4) For the purposes of this section, the terms and charges for the intra-agency use of vehicles, water vessels, or heavy equipment or for the disposal through sale of vehicles, water vessels, or heavy equipment is solely within the discretion of the department and the department's determination of the terms, charges, or sale price is considered a reasonable term, charge, or sale price. [2009 c 368 § 1.]

77.12.690 Migratory waterfowl art committee—Duties—Deposit and use of funds—Audits. The migratory waterfowl art committee is responsible for the selection of the annual migratory bird stamp design and shall provide the design to the department. If the committee does not perform this duty within the time frame necessary to achieve proper and timely distribution of the stamps to license dealers, the director shall initiate the art work selection for that year. The committee shall create collector art prints and related artwork, utilizing the same design as provided to the department. The administration, sale, distribution, and other matters relating to the prints and sales of stamps with prints and related artwork shall be the responsibility of the migratory waterfowl art committee.

The total amount brought in from the sale of prints and related artwork shall be deposited in the state wildlife account created in RCW 77.12.170. The costs of producing and marketing of prints and related artwork, including administrative expenses mutually agreed upon by the committee and the director, shall be paid out of the total amount brought in from sales of those same items. Net funds derived from the sale of prints and related artwork shall be used by the director to contract with one or more appropriate individuals or nonprofit organizations for the development of waterfowl propagation projects within Washington which specifically provide waterfowl for the Pacific flyway. The department shall not contract with any individual or organization that obtains compensation for allowing waterfowl hunting except if the individual or organization does not permit hunting for compensation on the subject property.

The migratory waterfowl art committee shall have an annual audit of its finances conducted by the state auditor and shall furnish a copy of the audit to the commission. [2009 c 333 § 38. Prior: 1998 c 245 § 158; 1998 c 191 § 33; 1987 c 506 § 55; 1985 c 243 § 6.]

Effective date—1998 c 191: See note following RCW 77.32.050.

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

77.12.712 Columbia river recreational salmon and steelhead pilot stamp program. ***(Effective January 1, 2010, until June 30, 2016.)*** The department shall create and administer a Columbia river recreational salmon and steelhead pilot stamp program. The program must facilitate continued and, to the maximum extent possible, improved recreational salmon and steelhead selective fishing opportunities on the Columbia river and its tributaries by supplementing the resources available to the department to carry out the scientific monitoring and evaluation, data collection, permitting, reporting, enforcement, and other activities necessary to provide such opportunities. [2009 c 420 § 2.]

Effective date—2009 c 420 § 2: "Section 2 of this act takes effect January 1, 2010." [2009 c 420 § 10.]

Expiration date—2009 c 420 §§ 2-6: "Sections 2 through 6 of this act expire June 30, 2016." [2009 c 420 § 7.]

Intent—2009 c 420: "It is the intent of the legislature to establish the Columbia river recreational salmon and steelhead pilot stamp program to continue and, to the maximum extent possible, increase recreational selective fishing opportunities on the Columbia river and its tributaries." [2009 c 420 § 1.]

Scope of authority—2009 c 420: "Nothing in this act changes the allocation of salmon or steelhead fisheries in the Columbia river and its tributaries or the authorities or processes by which such allocations are determined." [2009 c 420 § 9.]

Not subject to transaction fee—2009 c 420: See note following RCW 77.32.580.

77.12.714 Columbia river recreational salmon and steelhead pilot stamp program account. ***(Expires June 30, 2016.)*** The Columbia river recreational salmon and steelhead pilot stamp program account is created in the custody of the state treasurer. All receipts from Columbia river salmon and steelhead stamp or endorsement purchases under RCW 77.32.580 and gifts made for purposes of the Columbia river recreational salmon and steelhead pilot stamp program must be deposited into the account. Expenditures from the account may be used only for purposes of the program created in RCW 77.12.712. Only the director or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. [2009 c 420 § 4.]

Expiration date—2009 c 420 §§ 2-6: See note following RCW 77.12.712.

Intent—Scope of authority—2009 c 420: See notes following RCW 77.12.712.

Not subject to transaction fee—2009 c 420: See note following RCW 77.32.580.

77.12.716 Columbia river salmon and steelhead recreational anglers board. ***(Expires June 30, 2016.)*** (1) The department shall administer the Columbia river recreational salmon and steelhead pilot stamp program in consultation with a Columbia river salmon and steelhead recreational anglers board. The board shall serve in an advisory capacity to the department.

(2) The department shall solicit recommendations for membership on the Columbia river salmon and steelhead recreational anglers board from recognized recreational fishing organizations of the Columbia river, and the director or director's designee shall give deference to such recommendations when selecting board members. In making these selections, the director or director's designee shall seek to provide equitable representation from the various geographic areas of the Columbia river. The board must consist of no fewer than six and no more than ten members at any one time.

(3) The Columbia river salmon and steelhead recreational anglers board shall make annual recommendations to

the department regarding program expenditures. To the maximum extent possible, the board and department shall seek to reach consensus regarding program activities and expenditures. The director or the director's designee shall provide the board with a written explanation when the department expends funds from the Columbia river recreational salmon and steelhead pilot stamp program account created in RCW 77.12.714 in a manner that differs substantially from board recommendations.

(4) Columbia river salmon and steelhead recreational anglers board members shall be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060. [2009 c 420 § 5.]

Expiration date—2009 c 420 §§ 2-6: See note following RCW 77.12.712.

Intent—Scope of authority—2009 c 420: See notes following RCW 77.12.712.

Not subject to transaction fee—2009 c 420: See note following RCW 77.32.580.

77.12.718 Columbia river recreational salmon and steelhead pilot stamp program—Review—Report to the legislature. ***(Expires June 30, 2016.)*** By December 1, 2014, the department and the Columbia river salmon and steelhead recreational anglers board shall review the Columbia river recreational salmon and steelhead pilot stamp program, prepare a brief summary of the activities conducted under the program, and provide this summary and a recommendation whether the program should be continued to the appropriate committees of the senate and house of representatives. [2009 c 420 § 6.]

Expiration date—2009 c 420 §§ 2-6: See note following RCW 77.12.712.

Intent—Scope of authority—2009 c 420: See notes following RCW 77.12.712.

Not subject to transaction fee—2009 c 420: See note following RCW 77.32.580.

77.12.820 Eastern Washington pheasant enhancement account—Created—Use of moneys—Report to the legislature. The eastern Washington pheasant enhancement account is created in the custody of the state treasurer. All receipts under RCW 77.12.810 must be deposited in the account. Moneys in the account are subject to legislative appropriation and shall be used for the purpose of funding the eastern Washington pheasant enhancement program. The department may use moneys from the account to improve pheasant habitat or to purchase or produce pheasants. The department must continue to release rooster pheasants in eastern Washington. The eastern Washington pheasant enhancement account funds must not be used for the purchase of land. The account may be used to offer grants to improve pheasant habitat on public or private lands that are open to public hunting. The department may enter partnerships with private landowners, nonprofit corporations, cooperative groups, and federal or state agencies for the purposes of pheasant habitat enhancement in areas that will be available for public hunting. The department shall submit an annual report to the appropriate committees of the legislature by December 1st regarding the department's eastern Washington pheasant activities. [2009 c 333 § 52; 1997 c 422 § 5.]

Findings—1997 c 422: See note following RCW 77.12.790.

77.12.870 Derelict fishing gear database. (1) The department, in consultation with the Northwest straits commission, the department of natural resources, and other interested parties, must create and maintain a database of known derelict fishing gear, including the type of gear and its location.

(2) A person who loses or abandons commercial fishing gear within the waters of the state is encouraged to report the location of the loss and the type of gear lost to the department within forty-eight hours of the loss. [2009 c 333 § 21; 2002 c 20 § 3.]

Finding—Purpose—2002 c 20: See note following RCW 77.12.865.

77.12.879 Aquatic invasive species prevention account—Aquatic invasive species prevention program for recreational and commercial watercraft—Enforcement program—Check stations—Training—Report to the legislature. (1) The aquatic invasive species prevention account is created in the state treasury. Moneys directed to the account from RCW 88.02.050 must be deposited in the account. Expenditures from the account may only be used as provided in this section. Moneys in the account may be spent only after appropriation.

(2) Funds in the aquatic invasive species prevention account may be appropriated to the department to develop an aquatic invasive species prevention program for recreational and commercial watercraft. Funds must be expended as follows:

(a) To inspect recreational and commercial watercraft;

(b) To educate general law enforcement officers on how to enforce state laws relating to preventing the spread of aquatic invasive species;

(c) To evaluate and survey the risk posed by recreational and commercial watercraft in spreading aquatic invasive species into Washington state waters;

(d) To evaluate the risk posed by float planes in spreading aquatic invasive species into Washington state waters; and

(e) To implement an aquatic invasive species early detection and rapid response plan. The plan must address the treatment and immediate response to the introduction to Washington waters of aquatic invasive species. Agency and public review of the plan must be conducted under chapter 43.21C RCW, the state environmental policy act. If the implementation measures or actions would have a probable significant adverse environmental impact, a detailed statement under chapter 43.21C RCW must be prepared on the plan.

(3) Funds in the aquatic invasive species enforcement account created in RCW 43.43.400 may be appropriated to the department and Washington state patrol to develop an aquatic invasive species enforcement program for recreational and commercial watercraft. The department shall provide training to Washington state patrol employees working at port of entry weigh stations, and other local law enforcement employees, on how to inspect recreational and commercial watercraft for the presence of aquatic invasive species. A person who enters Washington by road transporting any commercial or recreational watercraft that has been

used in any designated aquatic invasive species state or foreign country as defined by rule of the department must have in his or her possession valid documentation that the watercraft has been inspected and found free of aquatic invasive species. The department is authorized to require persons transporting recreational and commercial watercraft to stop at check stations. Check stations must be plainly marked by signs, operated by at least one uniformed fish and wildlife officer, and operated in a safe manner. Any person stopped at a check station who possesses a recreational or commercial watercraft that has been used in any designated aquatic invasive species state or foreign country as defined by rule of the department, or that is contaminated with aquatic invasive species, must bear the expense for any necessary impoundment, transportation, cleaning, and decontamination of the watercraft. Any person stopped at a check station who possesses a recreational or commercial watercraft that has been used in any designated aquatic invasive species state or foreign country as defined by rule of the department, or that is contaminated with aquatic invasive species, is exempt from the criminal penalties found in RCW 77.15.253 and 77.15.290, and forfeiture under RCW 77.15.070, if that person complies with all department directives for the proper decontamination of the watercraft and equipment.

(4) The department shall submit a biennial report to the appropriate legislative committees describing the actions taken to implement this section along with suggestions on how to better fulfill the intent of chapter 464, Laws of 2005. [2009 c 333 § 22; 2007 c 350 § 3; 2005 c 464 § 3.]

Findings—Intent—2005 c 464: See note following RCW 88.02.050.

Chapter 77.15 RCW
FISH AND WILDLIFE ENFORCEMENT CODE

Sections

77.15.050 "Conviction" defined.
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77.15.750 Unlawful use of a department permit—Penalty.
77.15.760 Suspension of a master hunter permit—Appeal hearing.

77.15.050 "Conviction" defined. (1) Unless the context clearly requires otherwise, as used in this chapter, "conviction" means:

(a) A final conviction in a state or municipal court;

(b) A failure to appear at a hearing to contest an infraction or criminal citation; or

(c) An unvacated forfeiture of bail paid as a final disposition for an offense.

(2) A plea of guilty, or a finding of guilt for a violation of this title or rule of the commission or director constitutes a conviction regardless of whether the imposition of sentence is deferred or the penalty is suspended. [2009 c 333 § 1; 1998 c 190 § 6.]

77.15.075 Enforcement authority of fish and wildlife officers—Volunteer chaplain. (1) Fish and wildlife officers and ex officio fish and wildlife officers shall enforce this title, rules of the department, and other statutes as prescribed by the legislature. Fish and wildlife officers who are not ex officio officers shall have and exercise, throughout the state, such police powers and duties as are vested in sheriffs and peace officers generally. An applicant for a fish and wildlife officer position must be a citizen of the United States of America who can read and write the English language. All fish and wildlife officers employed after June 13, 2002, must successfully complete the basic law enforcement academy course, known as the basic course, sponsored by the criminal justice training commission, or the basic law enforcement equivalency certification, known as the equivalency course, provided by the criminal justice training commission. All officers employed on June 13, 2002, must have successfully completed the basic course, the equivalency course, or the supplemental course in criminal law enforcement, known as the supplemental course, offered under chapter 155, Laws of 1985. Any officer who has not successfully completed the basic course, the equivalency course, or the supplemental course must complete the basic course or the equivalency course within fifteen months of June 13, 2002.

(2) Fish and wildlife officers are peace officers.

(3) Any liability or claim of liability under chapter 4.92 RCW that arises out of the exercise or alleged exercise of authority by a fish and wildlife officer rests with the department unless the fish and wildlife officer acts under the direction and control of another agency or unless the liability is otherwise assumed under an agreement between the department and another agency.

(4) Fish and wildlife officers may serve and execute warrants and processes issued by the courts.

(5) The department may utilize the services of a volunteer chaplain as provided under chapter 41.22 RCW. [2009 c 204 § 1; 2003 c 388 § 3; 2002 c 128 § 4; 2000 c 107 § 212; 1998 c 190 § 112; 1993 sp.s. c 2 § 67; 1988 c 36 § 50; 1987 c 506 § 16; 1985 c 155 § 2; 1980 c 78 § 17. Formerly RCW 77.12.055.]

Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79: See RCW 43.300.900.

Severability—1993 sp.s. c 2: See RCW 43.300.901.

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.15.100 Forfeited wildlife and articles—Disposition—Department authority—Sale. (1) Unless otherwise provided in this title, fish, shellfish, or wildlife unlawfully taken or possessed, or involved in a violation shall be forfeited to the state upon conviction. Unless already held by, sold, destroyed, or disposed of by the department, the court shall order such fish or wildlife to be delivered to the depart-

ment. Where delay will cause loss to the value of the property and a ready wholesale buying market exists, the department may sell property to a wholesale buyer at a fair market value.

(2) When seized property is forfeited to the department, the department may retain it for official use unless the property is required to be destroyed, or upon application by any law enforcement agency of the state, release the property to the agency for the use of enforcing this title, or sell such property and deposit the proceeds into the fish and wildlife enforcement reward account established under RCW 77.15.425. Any sale of other property shall be at public auction or after public advertisement reasonably designed to obtain the highest price. The time, place, and manner of holding the sale shall be determined by the director. The director may contract for the sale to be through the department of general administration as state surplus property, or, except where not justifiable by the value of the property, the director shall publish notice of the sale once a week for at least two consecutive weeks before the sale in at least one newspaper of general circulation in the county in which the sale is to be held. [2009 c 333 § 39; 2000 c 107 § 235; 1998 c 190 § 63.]

77.15.310 Unlawful failure to use or maintain approved fish guard on water diversion device—Penalty. (1) A person is guilty of unlawful failure to use or maintain an approved fish guard on a diversion device if the person owns, controls, or operates a device used for diverting or conducting water from a lake, river, or stream and:

(a) The device is not equipped with a fish guard, screen, or bypass approved by the director as required by RCW 77.57.010 or 77.57.070; or

(b) The person knowingly fails to maintain or operate an approved fish guard, screen, or bypass so as to effectively screen or prevent fish from entering the intake.

(2) Unlawful failure to use or maintain an approved fish guard, screen, or bypass on a diversion device is a gross misdemeanor. Following written notification to the person from the department that there is a violation, each day that a diversion device is operated without an approved or maintained fish guard, screen, or bypass is a separate offense. [2009 c 333 § 3; 2003 c 39 § 38; 2000 c 107 § 240; 1998 c 190 § 53.]

77.15.320 Unlawful failure to provide, maintain, or operate fishway for dam or other obstruction—Penalty. (1) A person is guilty of unlawful failure to provide, maintain, or operate a fishway for dam or other obstruction if the person owns, operates, or controls a dam or other obstruction to fish passage on a river or stream and:

(a) The dam or obstruction is not provided with a durable and efficient fishway approved by the director as required by RCW 77.57.030;

(b) Fails to maintain a fishway in efficient operating condition; or

(c) Fails to continuously supply a fishway with a sufficient supply of water to allow the free passage of fish.

(2) Unlawful failure to provide, maintain, or operate a fishway for dam or other obstruction is a gross misdemeanor. Following written notification to the person from the department that there is a violation, each day of unlawful failure to provide, maintain, or operate a fishway is a separate offense. [2009 c 333 § 4; 2000 c 107 § 241; 1998 c 190 § 54.]

77.15.370 Unlawful recreational fishing in the first degree—Penalty. (1) A person is guilty of unlawful recreational fishing in the first degree if:

(a) The person takes, possesses, or retains two times or more than the bag limit or possession limit of fish or shellfish allowed by any rule of the director or commission setting the amount of food fish, game fish, or shellfish that can be taken, possessed, or retained for noncommercial use;

(b) The person fishes in a fishway;

(c) The person shoots, gaffs, snags, snares, spears, dipnets, or stones fish or shellfish in state waters, or possesses fish or shellfish taken by such means, unless such means are authorized by express rule of the commission or director;

(d) The person fishes for or possesses a fish listed as threatened or endangered in 50 C.F.R. Sec. 17.11 (2002), unless fishing for or possession of such fish is specifically allowed under federal or state law; or

(e) The person possesses a sturgeon measuring in excess of the maximum size limit as established by rules adopted by the department.

(2) Unlawful recreational fishing in the first degree is a gross misdemeanor. [2009 c 333 § 17; 2005 c 406 § 3; 2001 c 253 § 38; 1998 c 190 § 19.]

77.15.425 Fish and wildlife enforcement reward account. The fish and wildlife enforcement reward account is created in the custody of the state treasurer. Deposits to the account include: Receipts from fish and shellfish overages as a result of a department enforcement action; fees for hunter education deferral applications; fees for master hunter applications and master hunter certification renewals; all receipts from criminal wildlife penalty assessments under RCW 77.15.400 and 77.15.420; all receipts of court-ordered restitution or donations associated with any fish, shellfish, or wildlife enforcement action; and proceeds from forfeitures and evidence pursuant to RCW 77.15.070 and 77.15.100. The department may accept money or personal property from persons under conditions requiring the property or money to be used consistent with the intent of expenditures from the fish and wildlife enforcement reward account. Expenditures from the account may be used only for investigation and prosecution of fish and wildlife offenses, to provide rewards to persons informing the department about violations of this title and rules adopted under this title, to offset department-approved costs incurred to administer the hunter education deferral program and the master hunter [permit] program, and for other valid enforcement uses as determined by the commission. Only the director or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. [2009 c 333 § 18; 2006 c 148 § 2; 2005 c 406 § 1.]

77.15.510 Acting as a game fish guide, food fish guide, or chartering without a license—Penalty. (1) A

person is guilty of acting as a game fish guide, food fish guide, or chartering without a license if:

(a) The person operates a charter boat and does not hold the charter boat license required for the food fish taken;

(b) The person acts as a food fish guide and does not hold a food fish guide license; or

(c) The person acts as a game fish guide and does not hold a game fish guide license.

(2) Acting without a game fish guide license, food fish guide license, or charter license is a gross misdemeanor. [2009 c 333 § 10; 2001 c 253 § 43; 1998 c 190 § 36.]

77.15.568 Secondary commercial fish receiver's failure to account for commercial harvest—Penalty. (1) A person is guilty of a secondary commercial fish receiver's failure to account for commercial harvest if:

(a) The person sells fish or shellfish at retail, stores or holds fish or shellfish for another in exchange for valuable consideration, ships fish or shellfish in exchange for valuable consideration, or brokers fish or shellfish in exchange for valuable consideration;

(b) The fish or shellfish were required to be entered on a Washington fish receiving ticket or a Washington aquatic farm production annual report; and

(c) The person fails to maintain records of each receipt of fish or shellfish, as required under subsections (3) through (5) of this section, at the location where the fish or shellfish are being sold, at the location where the fish or shellfish are being stored or held, or at the principal place of business of the shipper or broker.

(2) This section applies to a wholesale fish dealer acting in the capacity of a broker. However, this section does not apply to a wholesale fish dealer acting in the capacity of a wholesale fish dealer, to a fisher selling under a direct retail sale endorsement, or to a registered aquatic farmer.

(3) Records of the receipt of fish or shellfish required to be kept under this section must be in the English language and be maintained for three years from the date fish or shellfish are received, shipped, or brokered.

(4) Records maintained by persons that retail or broker must include the following:

(a) The name, address, and phone number of the wholesale fish dealer, fisher selling under a direct retail sale endorsement, or aquatic farmer or shellstock shipper from whom the fish or shellfish were purchased or received;

(b) The Washington fish receiving ticket number documenting original receipt or aquatic farm production quarterly report documenting production, if available;

(c) The date of purchase or receipt; and

(d) The amount and species of fish or shellfish purchased or received.

(5) Records maintained by persons that store, hold, or ship fish or shellfish for others must state the following:

(a) The name, address, and phone number of the person and business from whom the fish or shellfish were received;

(b) The date of receipt; and

(c) The amount and species of fish or shellfish received.

(6) A secondary commercial fish receiver's failure to account for commercial harvest is a misdemeanor. [2009 c 333 § 19; 2007 c 337 § 4; 2003 c 336 § 1.]

Intent—Finding—2007 c 337: See note following RCW 77.12.071.

77.15.610 Unlawful use of a commercial wildlife license—Penalty. (1) A person who holds a fur buyer's license or taxidermy license is guilty of unlawful use of a commercial wildlife license if the person:

(a) Fails to have the license in possession while engaged in fur buying or practicing taxidermy for commercial purposes; or

(b) Violates any rule of the department regarding reporting requirements or the use, possession, display, or presentation of the taxidermy or fur buyer's license.

(2) Unlawful use of a commercial wildlife license is a misdemeanor. [2009 c 333 § 5; 1998 c 190 § 33.]

77.15.620 Engaging in fish dealing activity—Unlicensed—Penalty. (1) A person is guilty of engaging in fish dealing activity without a license in the second degree if the person:

(a) Engages in the commercial processing of fish or shellfish, including custom canning or processing of personal use fish or shellfish and does not hold a wholesale dealer's license required by RCW 77.65.280(1) or 77.65.480 for anadromous game fish, or a direct retail endorsement under RCW 77.65.510;

(b) Engages in the wholesale selling, buying, or brokering of food fish or shellfish and does not hold a wholesale dealer's or buying license required by RCW 77.65.280(2) or 77.65.480 for anadromous game fish;

(c) Is a fisher who lands and sells his or her catch or harvest in the state to anyone other than a licensed wholesale dealer within or outside the state and does not hold a direct retail endorsement required by RCW 77.65.510; or

(d) Engages in the commercial manufacture or preparation of fertilizer, oil, meal, caviar, fish bait, or other byproducts from food fish or shellfish and does not hold a wholesale dealer's license required by RCW 77.65.280(4) or 77.65.480 for anadromous game fish.

(2) Engaging in fish dealing activity without a license in the second degree is a gross misdemeanor.

(3) A person is guilty of engaging in fish dealing activity without a license in the first degree if the person commits the act described by subsection (1) of this section and the violation involves: (a) Fish or shellfish worth two hundred fifty dollars or more; (b) a failure to document such fish or shellfish with a fish receiving ticket or other documentation required by statute or rule of the department; or (c) violates [a violation of] any other rule of the department regarding wholesale fish buying and dealing. Engaging in fish dealing activity without a license in the first degree is a class C felony. [2009 c 333 § 20; 2002 c 301 § 7; 2000 c 107 § 253; 1998 c 190 § 43.]

Finding—Effective date—2002 c 301: See notes following RCW 77.65.510.

77.15.700 Grounds for department revocation and suspension of privileges. (1) The department shall impose revocation and suspension of privileges in the following circumstances:

(a) Upon conviction, if directed by statute for an offense.

(b) Upon conviction of a violation not involving commercial fishing, if the department finds that actions of the defendant demonstrated a willful or wanton disregard for conservation of fish or wildlife. Suspension of privileges under this subsection may be permanent.

(c) If a person is convicted twice within ten years for a violation involving unlawful hunting, killing, or possessing big game. Revocation and suspension under this subsection must be ordered for all hunting privileges for two years.

(d) If a person violates, three times or more in a ten-year period, recreational hunting or fishing laws or rules for which the person: (i) Is convicted of an offense; (ii) has an uncontested notice of infraction; (iii) fails to appear at a hearing to contest a fish and wildlife infraction; or (iv) is found to have committed an infraction. Revocation and suspension under this subsection must be ordered of all recreational hunting and fishing privileges for two years.

(2)(a) A violation punishable as an infraction counts towards the revocation and suspension of recreational hunting and fishing privileges under this section if that violation is:

(i) Punishable as a crime on July 24, 2005, and is subsequently decriminalized; or

(ii) One of the following violations, as they exist on July 24, 2005: RCW 77.15.160; WAC 220-56-116; WAC 220-56-315(11); or WAC 220-56-355 (1) through (4).

(b) The commission may, by rule, designate infractions that do not count towards the revocation and suspension of recreational hunting and fishing privileges.

(3) If either the deferred education licensee or the required nondeferred accompanying person, hunting under the authority of RCW 77.32.155(2), is convicted of a violation of this title, except for a violation of RCW 77.15.400 (1) through (3), the department may revoke all hunting licenses and tags and may order a suspension of either or both the deferred education licensee's and the nondeferred accompanying person's hunting privileges for one year. [2009 c 333 § 2; 2007 c 163 § 2; 2005 c 321 § 1; 2003 c 386 § 2; 2001 c 253 § 46; 1998 c 190 § 66.]

Findings—Intent—2003 c 386: "(1)(a) The legislature finds that existing law as it relates to the suspension of commercial fishing licenses does not take into account the real-life circumstances faced by the state's commercial fishing fleets. The nature of the commercial fishing industry, together with the complexity of fisheries regulations, is such that honest mistakes can be made by well-meaning and otherwise law-abiding fishers. Commercial fishing violations that occur within an acceptable margin of error should not result in the suspension of fishing privileges. Likewise, fishers facing the possibility of license suspension or revocation deserve the opportunity to explain any extenuating circumstances prior to having his or her professional privileges suspended.

(b) The legislature intends, by creating the license suspension review committee, to provide a fisher with the opportunity to explain any extenuating circumstances that led to a commercial fishing violation. The legislature intends for the license suspension review committee to give serious considerations to the case-specific facts and scenarios leading up to a violation, and for license suspensions to issue only when the facts indicate a willful act that undermines the conservation of fish stocks. Frivolous violations should not result in the suspension of privileges, and should be punished only by the criminal sanctions attached to the underlying crime.

(2)(a) The legislature further finds that gross abuses of fish stocks should not be tolerated. Individuals convicted of even one violation that is egregious in nature, causing serious detriment to a fishery or the competitive disposition of other fishers, should have his or her license suspended and revoked.

(b) The legislature intends for the license suspension review committee to take egregious fisheries' violations seriously. When dealing with individuals convicted of only one violation, the license suspension review committee should only consider suspension for individuals that are convicted of violations that are of a severe magnitude and show a wanton disregard for the public's resource." [2003 c 386 § 1.]

77.15.750 Unlawful use of a department permit—Penalty. (1) A person is guilty of unlawful use of a department permit if the person:

(a) Violates any terms or conditions of the permit issued by the department or the director; or

(b) Violates any rule of the commission or the director applicable to the requirement for, issuance of, or use of the permit.

(2) Permits covered under subsection (1) of this section include, but are not limited to, master hunter permits, depredation permits, landowner hunting permits, commercial carp license permits, permits to possess or dispense beer or malt liquor pursuant to RCW 66.28.210, and permits to hold, sponsor, or attend an event requiring a banquet permit from the liquor control board. Permits excluded from subsection (1) of this section include fish and wildlife lands vehicle use permits, commercial use or activity permits, noncommercial use or activity permits, parking permits, experimental fishery permits, trial commercial fishery permits, and scientific collection permits.

(3) Unlawful use of a department permit is a misdemeanor.

(4) A person is guilty of unlawful use of an experimental fishery permit or a trial commercial fishery permit if the person:

(a) Violates any terms or conditions of the permit issued by the department or the director; or

(b) Violates any rule of the commission or the director applicable to the issuance or use of the permit.

(5) Unlawful use of an experimental fishery permit or a trial commercial fishery permit is a gross misdemeanor.

(6) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Experimental fishery permit" means a permit issued by the director for either:

(i) An "emerging commercial fishery," defined as a fishery for a newly classified species for which the department has determined that there is a need to limit participation; or

(ii) An "expanding commercial fishery," defined as a fishery for a previously classified species in a new area, by a new method, or at a new effort level, for which the department has determined that there is a need to limit participation.

(b) "Trial commercial fishery permit" means a permit issued by the department for trial harvest of a newly classified species or harvest of a previously classified species in a new area or by a new means. [2009 c 333 § 14.]

77.15.760 Suspension of a master hunter permit—Appeal hearing. (1) The department may suspend a person's master hunter permit for the following reasons and corresponding lengths of time:

(a) If the person pays the required fine or is found to have committed an infraction under this chapter or the department's rules, the department shall suspend the person's master hunter permit for two years;

(b) If the person pays the required fine or is convicted of a misdemeanor, gross misdemeanor, or felony under this chapter, the department shall suspend the person's master hunter permit for life;

(c) If the person pays the required fine or is convicted of trespass, reckless endangerment, criminal conspiracy, or making a false statement to law enforcement while hunting, fishing, or engaging in any activity regulated by the department, the department shall suspend the person's master hunter permit for life;

(d) If the person pays the required fine or is convicted of a felony prohibiting the possession of firearms, unless firearm possession is reinstated, the department shall suspend the person's master hunter permit for life;

(e) If the person has a hunting or fishing license revoked or has hunting or fishing license privileges suspended in another state, the department shall suspend the person's master hunter permit for life;

(f) If the person is cited, or charged by complaint, for an offense under this chapter; or for trespass, reckless endangerment, criminal conspiracy, or making a false statement to law enforcement while hunting, fishing, or engaging in any activity regulated by the department, the department may immediately suspend the person's master hunter permit until the offense has been adjudicated; or

(g) If the person submits fraudulent information to the department, the department shall suspend the person's master hunter permit for life.

(2) Any master hunter who is notified of an intended suspension may request an appeal hearing under chapter 34.05 RCW. [2009 c 333 § 16.]

Chapter 77.32 RCW
LICENSES

Sections

77.32.010 Recreational license required—Activities—Permit for parking.
77.32.050 Recreational licenses, permits, tags, stamps, and raffle tickets issued by authorized officials—Rules—Fees—Transaction fee.
77.32.155 Hunter education training program—Certificate—Deferral—Adoption of rules—Fee.
77.32.350 Migratory birds—Supplemental permit—Stamp—Fees.
77.32.430 Catch record card—Disposition of funds.
77.32.470 Personal use fishing licenses—Fees—Temporary fishing license—Family fishing weekend license—Rules.
77.32.530 Hunting big game—Auction or raffle—Procedure.
77.32.555 Surcharge to fund biotoxin testing and monitoring—Algal bloom program—Biotoxin account.
77.32.560 Watchable wildlife decals.
77.32.570 Master hunter permit program—Fee.
77.32.575 Western Washington pheasant permit—Fee.
77.32.580 Columbia river salmon and steelhead stamp or endorsement—Cost. *(Expires June 30, 2016.)*

77.32.010 Recreational license required—Activities—Permit for parking. (1) Except as otherwise provided in this chapter, a recreational license issued by the director is required to hunt for or take wild animals or wild birds, fish for, take, or harvest fish, shellfish, and seaweed. A recreational fishing or shellfish license is not required for carp, smelt, and crawfish, and a hunting license is not required for bullfrogs.

(2) A permit issued by the department is required to park a motor vehicle upon improved department access facilities.

(3) During the 2009-2011 fiscal biennium to enable the implementation of the pilot project established in section 307, chapter 329, Laws of 2008, a fishing permit issued to a nontribal member by the Colville Tribes shall satisfy the license requirements in subsection (1) of this section on the waters of Lake Rufus Woods and on the north shore of Lake Rufus Woods, and a Colville Tribes tribal member identification card shall satisfy the license requirements in subsection (1) of this section on all waters of Lake Rufus Woods. [2009 c 564 § 956; 2008 c 329 § 923; 2006 c 57 § 1; 2001 c 253 § 49; 2000 c 107 § 264; 1998 c 191 § 7; 1987 c 506 § 76; 1985 c 457 § 25; 1983 c 284 § 2; 1981 c 310 § 7; 1980 c 78 § 103; 1979 ex.s. c 3 § 1; 1959 c 245 § 1; 1955 c 36 § 77.32.010. Prior: 1947 c 275 § 93; Rem. Supp. 1947 § 5992-102.]

Effective date—2009 c 564: See note following RCW 2.68.020.

Severability—Effective date—2008 c 329: See notes following RCW 28B.105.110.

Effective date—1998 c 191: See note following RCW 77.32.400.

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Findings—Intent—1983 c 284: See note following RCW 82.27.020.

Effective dates—Legislative intent—1981 c 310: See notes following RCW 77.12.170.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.32.050 Recreational licenses, permits, tags, stamps, and raffle tickets issued by authorized officials—Rules—Fees—Transaction fee. (1) All recreational licenses, permits, tags, and stamps required by this title and raffle tickets authorized under chapter 77.12 RCW shall be issued under the authority of the commission. The commission shall adopt rules for the issuance of recreational licenses, permits, tags, stamps, and raffle tickets, and for the collection, payment, and handling of license fees, terms and conditions to govern dealers, and dealers' fees. A transaction fee on recreational documents issued through an automated licensing system may be set by the commission and collected from licensees. The department may authorize all or part of such fee to be paid directly to a contractor providing automated licensing system services. Fees retained by dealers shall be uniform throughout the state. The department shall authorize dealers to collect and retain dealer fees of at least two dollars for purchase of a standard hunting or fishing recreational license document, except that the commission may set a lower dealer fee for issuance of tags or when a licensee buys a license that involves a stamp or display card format rather than a standard department licensing document form.

(2) For the 2009-2011 biennium, the department shall charge an additional transaction fee of ten percent on all recreational licenses, permits, tags, stamps, or raffle tickets. These transaction fees must be deposited into the state wildlife account, created in RCW 77.12.170, for funding fishing and hunting opportunities for recreational license holders. [2009 c 333 § 71; 2003 c 389 § 1; 2000 c 107 § 266; 1999 c 243 § 2; 1998 c 191 § 10; 1996 c 101 § 8; 1995 c 116 § 1; 1987 c 506 § 77; 1981 c 310 § 16; 1980 c 78 § 106; 1979 ex.s. c 3 § 2; 1955 c 36 § 77.32.050. Prior: 1953 c 75 § 2; 1947 c 275 § 97; Rem. Supp. 1947 § 5992-106.]

Finding—1999 c 243: "The legislature finds that recreational license dealers are private businesses that provide the service of license sales in every part of the state. The dealers who sell recreational fishing and hunting licenses for the department of fish and wildlife perform a valuable public service function for those members of the public who purchase licenses as well as a revenue generating function for the department. The modernized fishing and hunting license format will require additional investments by license dealers in employee training and public education." [1999 c 243 § 1.]

Effective date—1999 c 243: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 10, 1999]." [1999 c 243 § 4.]

Effective date—1998 c 191: "Sections 10, 24, 31 through 33, 37, 43, and 45 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [March 27, 1998]." [1998 c 191 § 49.]

Findings—1996 c 101: See note following RCW 77.32.530.

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective dates—Legislative intent—1981 c 310: See notes following RCW 77.12.170.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.32.155 Hunter education training program—Certificate—Deferral—Adoption of rules—Fee. (1)(a) When purchasing any hunting license, persons under the age of eighteen shall present certification of completion of a course of instruction of at least ten hours in the safe handling of firearms, safety, conservation, and sportsmanship. All persons purchasing any hunting license for the first time, if born after January 1, 1972, shall present such certification.

(b)(i) The director may establish a program for training persons in the safe handling of firearms, conservation, and sportsmanship and shall prescribe the type of instruction and the qualifications of the instructors. The director shall, as part of establishing the training program, exempt members of the United States military from the firearms skills portion of any instruction course completed over the internet.

(ii) The director may cooperate with the National Rifle Association, organized sportsmen's groups, or other public or private organizations when establishing the training program.

(c) Upon the successful completion of a course established under this section, the trainee shall receive a hunter education certificate signed by an authorized instructor. The certificate is evidence of compliance with this section.

(d) The director may accept certificates from other states that persons have successfully completed firearm safety, hunter education, or similar courses as evidence of compliance with this section.

(2)(a) The director may authorize a once in a lifetime, one license year deferral of hunter education training for individuals who are accompanied by a nondeferred Washington-licensed hunter who has held a Washington hunting license for the prior three years and is over eighteen years of age. The commission shall adopt rules for the administration of this subsection to avoid potential fraud and abuse.

(b) The director is authorized to collect an application fee, not to exceed twenty dollars, for obtaining the once in a lifetime, one license year deferral of hunter education training from the department. This fee must be deposited into the fish and wildlife enforcement reward account and must be used exclusively to administer the deferral program created in this subsection.

(c) For the purposes of this subsection, "accompanied" means to go along with another person while staying within a range of the other person that permits continual unaided visual and auditory communication.

(3) To encourage the participation of an adequate number of instructors for the training program, the commission shall develop nonmonetary incentives available to individuals who commit to serving as an instructor. The incentives may include additional hunting opportunities for instructors. [2009 c 269 § 1; 2007 c 163 § 1; 2006 c 23 § 1; 1998 c 191 § 17; 1993 c 85 § 1; 1987 c 506 § 81; 1981 c 310 § 21; 1980 c 78 § 104; 1957 c 17 § 1. Formerly RCW 77.32.015.]

Effective date—1998 c 191: See note following RCW 77.32.400.

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective dates—Legislative intent—1981 c 310: See notes following RCW 77.12.170.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.32.350 Migratory birds—Supplemental permit—Stamp—Fees. In addition to a small game hunting license, a supplemental permit or stamp is required to hunt for migratory birds.

(1) A migratory bird validation is required for all persons sixteen years of age or older to hunt migratory birds. The fee for the validation for hunters is ten dollars for residents and nonresidents. The fee for the stamp for collectors is ten dollars.

(2) The migratory bird license must be validated at the time of signature of the licensee. [2009 c 333 § 72; 2002 c 283 § 1; 2000 c 107 § 270; 1998 c 191 § 25; 1998 c 191 § 24; 1992 c 41 § 1; 1991 sp.s. c 7 § 9; 1990 c 84 § 6; 1989 c 365 § 1; 1987 c 506 § 105. Prior: 1985 c 464 § 9; 1985 c 243 § 1; 1984 c 240 § 6; 1981 c 310 § 12.]

Effective date—1998 c 191: See note following RCW 77.32.400.

Effective date—1992 c 41: "This act shall take effect January 1, 1993. The director of wildlife may take steps necessary to ensure that this act is implemented on its effective date." [1992 c 41 § 2.]

Effective date—1991 sp.s. c 7: See note following RCW 77.65.450.

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—1985 c 464: See note following RCW 77.65.450.

Effective dates—Legislative intent—1981 c 310: See notes following RCW 77.12.170.

77.32.430 Catch record card—Disposition of funds. (1) Catch record card information is necessary for proper management of the state's food fish and game fish species and shellfish resources. Catch record card administration shall be under rules adopted by the commission. There is no charge for an initial catch record card. Each subsequent or duplicate catch record card costs ten dollars.

(2) A license to take and possess Dungeness crab is only valid in Puget Sound waters east of the Bonilla-Tatoosh line if the fisher has in possession a valid catch record card officially endorsed for Dungeness crab. The endorsement shall cost no more than three dollars, including any or all fees authorized under RCW 77.32.050, when purchased for a per-

sonal use saltwater, combination, or shellfish and seaweed license. The endorsement shall cost no more than one dollar, including any or all fees authorized under RCW 77.32.050, when purchased for a temporary combination fishing license authorized under RCW 77.32.470(3)(a).

(3) Catch record cards issued with affixed temporary short-term charter stamp licenses are not subject to the ten-dollar charge nor to the Dungeness crab endorsement fee provided for in this section. Charter boat or guide operators issuing temporary short-term charter stamp licenses shall affix the stamp to each catch record card issued before fishing commences. Catch record cards issued with a temporary short-term charter stamp are valid for one day.

(4) The department shall include provisions for recording marked and unmarked salmon in catch record cards issued after March 31, 2004.

(5) The funds received from the sale of catch record cards and the Dungeness crab endorsement must be deposited into the state wildlife account created in RCW 77.12.170. The funds received from the Dungeness crab endorsement may be used only for the sampling, monitoring, and management of catch associated with the Dungeness crab recreational fisheries. Moneys allocated under this section shall supplement and not supplant other federal, state, and local funds used for Dungeness crab recreational fisheries management. [2009 c 333 § 40; 2005 c 192 § 2; 2004 c 107 § 2; 2003 c 318 § 1; 1998 c 191 § 5; 1989 c 305 § 10. Formerly RCW 75.25.190.]

Intent—2004 c 107: "It is the intent of the legislature to optimize the management of the recreational allocation of Dungeness crab in Washington state. To accomplish this task, it is necessary to accurately and efficiently quantify the total catch by recreational fishers for Dungeness crab using data from catch record cards. Therefore, an endorsement fee on the catch record card paid at the time of purchasing a recreational fishing license will be required for Dungeness crab to specifically identify the recreational crab harvesting population. The endorsement fee will significantly improve the precision of the catch estimates by eliminating the current practice of sampling fishers who do not participate in the recreational crab fishery." [2004 c 107 § 1.]

Report—2004 c 107: "After the completion of one season using the Dungeness crab endorsement fee for Puget Sound recreational Dungeness crab fisheries, the department of fish and wildlife shall evaluate the effectiveness of the endorsement fee as a method for improving the accuracy of catch estimates for the Puget Sound recreational Dungeness crab fishery. The department's report shall include how the method has affected their ability to more accurately estimate the preseason allocation of the Puget Sound recreational Dungeness crab fishery and monitor in-season catch. The department shall report their findings to the appropriate committees of the legislature by May 15, 2006." [2004 c 107 § 3.]

Effective date—2004 c 107: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect May 15, 2004." [2004 c 107 § 4.]

Effective date—2003 c 318: "This act takes effect April 1, 2004." [2003 c 318 § 3.]

Effective date—1998 c 191: See note following RCW 77.32.400.

77.32.470 Personal use fishing licenses—Fees—Temporary fishing license—Family fishing weekend license—Rules. (1) A personal use saltwater, freshwater, combination, temporary, or family fishing weekend license is required for all persons fifteen years of age or older to fish for or possess fish taken for personal use from state waters or offshore waters.

(2) The fees for annual personal use saltwater, freshwater, or combination licenses are as follows:

(a) A combination license allows the holder to fish for or possess fish, shellfish, and seaweed from state waters or offshore waters. The fee for this license is thirty-six dollars for residents, seventy-two dollars for nonresidents, and five dollars for youth. There is an additional fifty-cent surcharge for this license, to be deposited in the rockfish research account created in RCW 77.12.702.

(b) A saltwater license allows the holder to fish for or possess fish taken from saltwater areas. The fee for this license is eighteen dollars for residents, thirty-six dollars for nonresidents, and five dollars for resident seniors. There is an additional fifty-cent surcharge for this license, to be deposited in the rockfish research account created in RCW 77.12.702.

(c) A freshwater license allows the holder to fish for, take, or possess food fish or game fish species in all freshwater areas. The fee for this license is twenty dollars for residents, forty dollars for nonresidents, and five dollars for resident seniors.

(3)(a) A temporary combination fishing license is valid for one to five consecutive days and allows the holder to fish for or possess fish, shellfish, and seaweed taken from state waters or offshore waters. The fee for this temporary fishing license is:

(i) One day - Seven dollars for residents and fourteen dollars for nonresidents;

(ii) Two days - Ten dollars for residents and twenty dollars for nonresidents;

(iii) Three days - Thirteen dollars for residents and twenty-six dollars for nonresidents;

(iv) Four days - Fifteen dollars for residents and thirty dollars for nonresidents; and

(v) Five days - Seventeen dollars for residents and thirty-four dollars for nonresidents.

(b) The fee for a charter stamp is seven dollars for a one-day temporary combination fishing license for residents and nonresidents for use on a charter boat as defined in RCW 77.65.150.

(c) A transaction fee to support the automated licensing system will be taken from the amounts set forth in this subsection for temporary licenses.

(d) Except for active duty military personnel serving in any branch of the United States armed forces, the temporary combination fishing license is not valid on game fish species for an eight-consecutive-day period beginning on the opening day of the lowland lake fishing season as defined by rule of the commission.

(e) The temporary combination fishing license fee for active duty military personnel serving in any branch of the United States armed forces is the resident rate as set forth in (a) of this subsection. Active duty military personnel must provide a valid military identification card at the time of purchase of the temporary license to qualify for the resident rate.

(f) There is an additional fifty-cent surcharge on the temporary combination fishing license and the associated charter stamp, to be deposited in the rockfish research account created in RCW 77.12.702.

(4) A family fishing weekend license allows for a maximum of six anglers: One resident and five youth; two resi-

dents and four youth; or one resident, one nonresident, and four youth. This license allows the holders to fish for or possess fish taken from state waters or offshore waters. The fee for this license is twenty dollars. This license is only valid during periods as specified by rule of the department.

(5) The commission may adopt rules to create and sell combination licenses for all hunting and fishing activities at or below a fee equal to the total cost of the individual license contained within any combination.

(6) The commission may adopt rules to allow the use of two fishing poles per fishing license holder for use on selected state waters. If authorized by the commission, license holders must purchase a two-pole stamp to use a second pole. The proceeds from the sale of the two-pole stamp must be deposited into the state wildlife account created in RCW 77.12.170 and used for the operation and maintenance of state-owned fish hatcheries. The fee for a two-pole stamp is twenty dollars for residents and nonresidents, and five dollars for resident seniors. [2009 c 333 § 6; 2008 c 35 § 1; 2007 c 442 § 5; 2005 c 192 § 1; 2003 c 181 § 1; 1998 c 191 § 16.]

Findings—Intent—Effective date—2007 c 442: See notes following RCW 77.12.702.

Effective date—2003 c 181: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 9, 2003]." [2003 c 181 § 2.]

Effective date—1998 c 191: See note following RCW 77.32.400.

77.32.530 Hunting big game—Auction or raffle—Procedure. (1) The commission in consultation with the director may authorize hunting of big game animals and wild turkeys through auction. The department may conduct the auction for the hunt or contract with a nonprofit wildlife conservation organization to conduct the auction for the hunt.

(2) The commission in consultation with the director may authorize hunting of up to a total of thirty big game animals and wild turkeys per year through raffle. The department may conduct raffles or contract with a nonprofit wildlife conservation organization to conduct raffles for hunting these animals. In consultation with the gambling commission, the director may adopt rules for the implementation of raffles involving hunting.

(3) The director shall establish the procedures for the hunts, which shall require any participants to obtain any required license, permit, or tag. Representatives of the department may participate in the hunt upon the request of the commission to ensure that the animals to be killed are properly identified.

(4) After deducting the expenses of conducting an auction or raffle, any revenues retained by a nonprofit organization, as specified under contract with the department, shall be devoted solely for wildlife conservation, consistent with its qualification as a bona fide nonprofit organization for wildlife conservation.

(5) The department's share of revenues from auctions and raffles shall be deposited in the state wildlife account created in RCW 77.12.170. The revenues shall be used to improve game management and shall supplement, rather than replace, other funds budgeted for management of game species. The commission may solicit input from groups or individuals with special interest in and expertise on a species in determining how to use these revenues.

(6) A nonprofit wildlife conservation organization may petition the commission to authorize an auction or raffle for a special hunt for big game animals and wild turkeys. [2009 c 333 § 41; 1996 c 101 § 5. Formerly RCW 77.12.770.]

Findings—1996 c 101: "The legislature finds that it is in the best interest of recreational hunters to provide them with the variety of hunting opportunities provided by auctions and raffles. Raffles provide an affordable opportunity for most hunters to participate in special hunts for big game animals and wild turkeys. The legislature also finds that wildlife management and recreation are not adequately funded and that such auctions and raffles can increase revenues to improve wildlife management and recreation." [1996 c 101 § 1.]

77.32.555 Surcharge to fund biotoxin testing and monitoring—Algal bloom program—Biotoxin account. (1) In addition to the fees authorized in this chapter, the department shall include a surcharge to fund biotoxin testing and monitoring by the department of health of beaches used for recreational shellfishing, and to fund monitoring by the Olympic region harmful algal bloom program of the Olympic natural resources center at the University of Washington. A surcharge of three dollars applies to resident and nonresident shellfish and seaweed licenses as authorized by RCW 77.32.520(3) (a) and (b); a surcharge of two dollars applies to resident and nonresident adult combination licenses as authorized by RCW 77.32.470(2)(a); a surcharge of two dollars applies to annual resident and nonresident razor clam licenses as authorized by RCW 77.32.520(4); and a surcharge of one dollar applies to the three-day razor clam license authorized by RCW 77.32.520(5). Amounts collected from these surcharges must be deposited in the biotoxin account created in subsection (3) of this section.

(2) Any moneys from surcharges remaining in the general fund—local account after the 2007-2009 biennium must be transferred to the biotoxin account created in subsection (3) of this section and be credited to the appropriate institution. The department of health and the University of Washington shall, by December 1st of each year, provide a letter to the relevant legislative policy and fiscal committees on the status of expenditures. This letter shall include, but is not limited to, the annual appropriation amount, the amount not expended, account fund balance, and reasons for not spending the full annual appropriation.

(3) The biotoxin account is created in the state treasury to be administered by the department of health. All moneys received under subsection (1) of this section must be deposited in the account and used by the department of health and the University of Washington as required by subsection (1) of this section. Of the moneys deposited into the account, one hundred fifty thousand dollars per year must be made available to the University of Washington to implement subsection (1) of this section. Moneys in the account may be spent only after appropriation. [2009 c 577 § 1; 2005 c 416 § 1; 2004 c 248 § 2; 2003 c 263 § 2.]

Effective date—2009 c 577: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2009." [2009 c 577 § 2.]

Effective date—2005 c 416: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state gov-

ernment and its existing public institutions, and takes effect immediately [May 11, 2005]." [2005 c 416 § 2.]

Findings—2003 c 263: "The legislature finds that testing and monitoring of beaches used for recreational shellfishing is essential to ensure the health of recreational shellfishers. The legislature also finds that it is essential to have a stable and reliable source of funding for such biotoxin testing and monitoring. The legislature also finds that the cost of the resident and nonresident personal use shellfish and seaweed licenses is undervalued and not properly aligned with neighboring states and provinces." [2003 c 263 § 1.]

Effective date—2003 c 263: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2003." [2003 c 263 § 4.]

77.32.560 Watchable wildlife decals. (1) The department may sell watchable wildlife decals. Proceeds from the sale of the decal must be deposited into the state wildlife account created in RCW 77.12.170 and must be dedicated to the support of the department's watchable wildlife activities. The department may also use proceeds from the sale of the decal for marketing the decal and for marketing watchable wildlife activities in the state.

(2) The term "watchable wildlife activities" includes but is not limited to: Initiating partnerships with communities to jointly develop watchable wildlife projects, building infrastructure to serve wildlife viewers, assisting and training communities in conducting wildlife watching events, developing destination wildlife viewing corridors and trails, tours, maps, brochures, and travel aides, and offering grants to assist rural communities in identifying key wildlife attractions and ways to protect and promote them.

(3) The commission must adopt by rule the cost of the watchable wildlife decal. A person may, at their discretion, contribute more than the cost as set by the commission by rule for the watchable wildlife decal in order to support watchable wildlife activities. A person who purchases a watchable wildlife decal must be issued one vehicle use permit free of charge. [2009 c 333 § 42; 2003 c 317 § 2.]

Findings—2003 c 317: "The legislature finds that healthy wildlife populations significantly contribute to the economic vitality of Washington's rural areas through increased opportunities for watchable wildlife and related tourism. Travel related to watchable wildlife is one of the fastest growing segments of the travel industry. Much of this travel occurs off-season, creating jobs and providing revenue to local businesses and governments during otherwise slow periods. The watchable wildlife industry is particularly important to Washington's rural economies.

The legislature also finds that it is vital to support programs that enhance watchable wildlife activities and tourism, while also protecting the wildlife resources that attract the viewers. A revenue source must be created and directed to the watchable wildlife programs of the department of fish and wildlife to develop watchable wildlife opportunities in cooperation with other local, state, and federal agencies, and nongovernmental organizations." [2003 c 317 § 1.]

77.32.570 Master hunter permit program—Fee. (1) In order to effectively manage wildlife in areas or at times when a higher proficiency and demonstrated skill level are needed for resource protection or public safety, the department establishes the master hunter permit program. The master hunter permit program emphasizes safe, ethical, responsible, and lawful hunting practices. Program goals include improving the public's perception of hunting and perpetuating the highest hunting standards.

(2) A master hunter permit is required to participate in controlled hunts to eliminate problem animals that damage property or threaten public safety. The commission may establish by rule the requirements an applicant must comply with when applying for or renewing a master hunter permit, including but not limited to a criminal background check. The director may establish an advisory group to assist the department with administering the master hunter [permit] program.

(3) The fee for an initial master hunter permit may not exceed fifty dollars, and the cost of renewing a master hunter permit may not exceed twenty-five dollars. Funds generated under this section must be deposited into the fish and wildlife enforcement reward account established in RCW 77.15.425, and the funds must be used exclusively to administer the master hunter [permit] program. [2009 c 333 § 15.]

77.32.575 Western Washington pheasant permit—Fee. (1) A western Washington pheasant permit is required to hunt for pheasant in western Washington.

(2) The permit is available as a season option, a youth full season option, or a three-day option. The fee for the permit is:

(a) For the resident full season option, seventy-five dollars;

(b) For the nonresident full season option, one hundred fifty dollars;

(c) For the youth full season option, thirty-five dollars;

(d) For the three-day option for a resident, thirty-five dollars and for a nonresident, seventy dollars. [2009 c 333 § 73.]

77.32.580 Columbia river salmon and steelhead stamp or endorsement—Cost. ***(Expires June 30, 2016.)*** (1) In addition to a recreational license required under this chapter, a Columbia river salmon and steelhead stamp or endorsement is required in order for any person fifteen years of age or older to fish recreationally for salmon or steelhead in the Columbia river and its tributaries where these fisheries have been authorized by the department. The cost for each stamp or endorsement is seven dollars and fifty cents. The department shall deposit all receipts from stamp or endorsement purchases into the Columbia river recreational salmon and steelhead pilot stamp program account created in RCW 77.12.714.

(2) For the purposes of this section and RCW 77.12.712 and 77.12.714 through 77.12.718, the term "Columbia river" means the Columbia river from a line across the Columbia river between Rocky Point in Washington and Tongue Point in Oregon to the Chief Joseph dam. [2009 c 420 § 3.]

Not subject to transaction fee—2009 c 420: "A Columbia river salmon and steelhead stamp or endorsement is not subject to the additional ten percent transaction fee on recreational licenses, permits, tags, stamps, or raffle tickets to be charged during the 2009-2011 biennium under chapter 333, Laws of 2009 if it or a subsequent version thereof becomes law." [2009 c 420 § 11.]

Expiration date—2009 c 420 §§ 2-6: See note following RCW 77.12.712.

Intent—Scope of authority—2009 c 420: See notes following RCW 77.12.712.

Chapter 77.36 RCW
WILDLIFE DAMAGE

Sections

77.36.005 Repealed. *(Effective July 1, 2010.)*
77.36.010 Definitions. *(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.) (Effective until July 1, 2010.)*
77.36.010 Definitions. *(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.) (Effective July 1, 2010.)*
77.36.020 Repealed. *(Effective July 1, 2010.)*
77.36.030 Trapping or killing wildlife threatening human safety or causing property damage—Limitations and conditions—Rules. *(Effective July 1, 2010.)*
77.36.040 Repealed. *(Effective July 1, 2010.)*
77.36.050 Repealed. *(Effective July 1, 2010.)*
77.36.060 Repealed. *(Effective July 1, 2010.)*
77.36.070 Limit on total claims from wildlife account per fiscal year. *(Effective July 1, 2010.)*
77.36.080 Limit on total claims from general fund per fiscal year—Emergency exceptions. *(Effective July 1, 2010.)*
77.36.100 Payment of claims for damage to commercial crops or commercial livestock—Noncash compensation—Offer of materials or services to offset or prevent wildlife interactions—Appeal of decisions. *(Effective July 1, 2010.)*
77.36.110 Eligibility for compensation under this chapter—Adoption of rules. *(Effective July 1, 2010.)*
77.36.120 Department's duties. *(Effective July 1, 2010.)*
77.36.130 Limit on cash compensation—Burden of proof. *(Effective July 1, 2010.)*
77.36.140 Chapter represents exclusive remedy. *(Effective July 1, 2010.)*
77.36.150 Review of rules and policies. *(Effective July 1, 2010, until July 30, 2014.)*
77.36.900 Decodified. *(Effective July 1, 2010.)*
77.36.901 Decodified. *(Effective July 1, 2010.)*

77.36.005 Repealed. ***(Effective July 1, 2010.)*** See Supplementary Table of Disposition of Former RCW Sections, this volume.

77.36.010 Definitions. ***(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.) (Effective until July 1, 2010.)*** Unless otherwise specified, the following definitions apply throughout this chapter:

(1) "Crop" means a commercially raised horticultural and/or agricultural product and includes growing or harvested product but does not include livestock. For the purposes of this chapter all parts of horticultural trees shall be considered a crop and shall be eligible for claims.

(2) "Emergency" means an unforeseen circumstance beyond the control of the landowner or tenant that presents a real and immediate threat to crops, domestic animals, or fowl.

(3) "Immediate family member" means spouse, state registered domestic partner, brother, sister, grandparent, parent, child, or grandchild. [2009 c 521 § 184; 1996 c 54 § 2; (2001 c 274 § 2 expired June 30, 2004).]

Expiration date—2001 c 274 §§ 1-3: See note following RCW 77.36.005.

Effective date—2001 c 274: See note following RCW 77.36.005.

77.36.010 Definitions. ***(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.) (Effective July 1, 2010.)*** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Claim" means an application to the department for compensation under this chapter.

(2) "Commercial crop" means a horticultural or agricultural product, including the growing or harvested product. For the purposes of this chapter all parts of horticultural trees shall be considered a commercial crop and shall be eligible for claims.

(3) "Commercial livestock" means cattle, sheep, and horses held or raised by a person for sale.

(4) "Compensation" means a cash payment, materials, or service.

(5) "Damage" means economic losses caused by wildlife interactions.

(6) "Immediate family member" means spouse, state registered domestic partner, brother, sister, grandparent, parent, child, or grandchild.

(7) "Owner" means a person who has a legal right to commercial crops, commercial livestock, or other property that was damaged during a wildlife interaction.

(8) "Wildlife interaction" means the negative interaction and the resultant damage between wildlife and commercial crops, commercial livestock, or other property. [2009 c 521 § 184; 2009 c 333 § 54; 1996 c 54 § 2; (2001 c 274 § 2 expired June 30, 2004).]

Reviser's note: This section was amended by 2009 c 333 § 54 and by 2009 c 521 § 184, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2009 c 333 §§ 53-66: "Sections *53 through 66 of this act take effect July 1, 2010." [2009 c 333 § 69.]

***Reviser's note:** Section 53, chapter 333, Laws of 2009 was vetoed by the governor.

Application—2009 c 333 §§ 53-66: "Sections *53 through 66 of this act apply prospectively only and not retroactively. Sections *53 through 66 of this act apply only to claims that arise on or after July 1, 2010. Claims under chapter 77.36 RCW that arise prior to July 1, 2010, must be adjudicated under chapter 77.36 RCW as it existed prior to July 1, 2010." [2009 c 333 § 67.]

***Reviser's note:** Section 53, chapter 333, Laws of 2009 was vetoed by the governor.

Expiration date—2001 c 274 §§ 1-3: See note following RCW 77.36.005.

Effective date—2001 c 274: See note following RCW 77.36.005.

77.36.020 Repealed. ***(Effective July 1, 2010.)*** See Supplementary Table of Disposition of Former RCW Sections, this volume.

77.36.030 Trapping or killing wildlife threatening human safety or causing property damage—Limitations and conditions—Rules. ***(Effective July 1, 2010.)*** (1) Subject to limitations and conditions established by the commission, the owner, the owner's immediate family member, the owner's documented employee, or a tenant of real property may trap, consistent with RCW 77.15.194, or kill wildlife that is threatening human safety or causing property damage on that property, without the licenses required under RCW 77.32.010 or authorization from the director under RCW 77.12.240.

(2) The commission shall establish the limitations and conditions of this section by rule. The rules must include:

(a) Appropriate protection for threatened or endangered species;

(b) Instances when verbal or written permission is required to kill wildlife;

(c) Species that may be killed under this section; and

(d) Requirements for the disposal of wildlife trapped or killed under this section.

(3) In establishing the limitations and conditions of this section, the commission shall take into consideration the recommendations of the Washington state wolf conservation and management plan. [2009 c 333 § 61; 1996 c 54 § 4.]

Effective date—Application—2009 c 333 §§ 53-66: See notes following RCW 77.36.010.

77.36.040 Repealed. ***(Effective July 1, 2010.)*** See Supplementary Table of Disposition of Former RCW Sections, this volume.

77.36.050 Repealed. ***(Effective July 1, 2010.)*** See Supplementary Table of Disposition of Former RCW Sections, this volume.

77.36.060 Repealed. ***(Effective July 1, 2010.)*** See Supplementary Table of Disposition of Former RCW Sections, this volume.

77.36.070 Limit on total claims from wildlife account per fiscal year. ***(Effective July 1, 2010.)*** The department may pay no more than one hundred twenty thousand dollars per fiscal year from the state wildlife account created in RCW 77.12.170 for claims and assessment costs for damage to commercial crops caused by wild deer or elk submitted under RCW 77.36.100. [2009 c 333 § 59; 1996 c 54 § 8.]

Effective date—Application—2009 c 333 §§ 53-66: See notes following RCW 77.36.010.

77.36.080 Limit on total claims from general fund per fiscal year—Emergency exceptions. ***(Effective July 1, 2010.)*** (1) Unless the legislature declares an emergency under this section, the department may pay no more than thirty thousand dollars per fiscal year from the general fund for claims and assessment costs for damage to commercial crops caused by wild deer or elk submitted under RCW 77.36.100.

(2)(a) The legislature may declare an emergency if weather, fire, or other natural events result in deer or elk causing excessive damage to commercial crops.

(b) After an emergency declaration, the department may pay as much as may be subsequently appropriated, in addition to the funds authorized under subsection (1) of this section, for claims and assessment costs under RCW 77.36.100. Such money shall be used to pay wildlife interaction claims only if the claim meets the conditions of RCW 77.36.100 and the department has expended all funds authorized under RCW 77.36.070 or subsection (1) of this section. [2009 c 333 § 60; 1996 c 54 § 9; (2001 c 274 § 3 expired June 30, 2004).]

Effective date—Application—2009 c 333 §§ 53-66: See notes following RCW 77.36.010.

Expiration date—2001 c 274 §§ 1-3: See note following RCW 77.36.005.

Effective date—2001 c 274: See note following RCW 77.36.005.

77.36.100 Payment of claims for damage to commercial crops or commercial livestock—Noncash compensation—Offer of materials or services to offset or prevent wildlife interactions—Appeal of decisions. ***(Effective July 1, 2010.)*** (1)(a) Except as limited by RCW 77.36.070 and 77.36.080, the department shall offer to distribute money appropriated to pay claims to the owner of commercial crops for damage caused by wild deer or elk or to the owners of commercial livestock that has been killed by bears, wolves, or cougars, or injured by bears, wolves, or cougars to such a degree that the market value of the commercial livestock has been diminished. Payments for claims for damage to commercial livestock are not subject to the limitations of RCW 77.36.070 and 77.36.080, but may not exceed the total amount specifically appropriated therefor.

(b) Owners of commercial crops or commercial livestock are only eligible for a claim under this subsection if:

(i) The owner satisfies the definition of "eligible farmer" in RCW 82.08.855;

(ii) The conditions of RCW 77.36.110 have been satisfied; and

(iii) The damage caused to the commercial crop or commercial livestock satisfies the criteria for damage established by the commission under this subsection.

(c) The commission shall adopt and maintain by rule criteria that clarifies the damage to commercial crops and commercial livestock qualifying for compensation under this subsection. An owner of a commercial crop or commercial livestock must satisfy the criteria prior to receiving compensation under this subsection. The criteria for damage adopted under this subsection must include, but not be limited to, a required minimum economic loss to the owner of the commercial crop or commercial livestock, which may not be set at a value of less than five hundred dollars.

(2)(a) The department may offer to provide noncash compensation only to offset wildlife interactions to a person who applies to the department for compensation for damage to property other than commercial crops or commercial livestock that is the result of a mammalian or avian species of wildlife on a case-specific basis if the conditions of RCW 77.36.110 have been satisfied and if the damage satisfies the criteria for damage established by the commission under this subsection.

(b) The commission shall adopt and maintain by rule criteria for damage to property other than a commercial crop or commercial livestock that is damaged by wildlife and may be eligible for compensation under this subsection, including criteria for filing a claim for compensation under this subsection.

(3)(a) To prevent or offset wildlife interactions, the department may offer materials or services to a person who applies to the department for assistance in providing mitigating actions designed to reduce wildlife interactions if the actions are designed to address damage that satisfies the criteria for damage established by the commission under this subsection.

(b) The commission shall adopt and maintain by rule criteria for mitigating actions designed to address wildlife interactions that may be eligible for materials and services under this section, including criteria for submitting an application under this section.

(4) An owner who files a claim under this section may appeal the decision of the department pursuant to rules adopted by the commission if the claim:

(a) Is denied; or

(b) Is disputed by the owner and the owner disagrees with the amount of compensation determined by the department. [2009 c 333 § 55.]

Effective date—Application—2009 c 333 §§ 53-66: See notes following RCW 77.36.010.

77.36.110 Eligibility for compensation under this chapter—Adoption of rules. ***(Effective July 1, 2010.)*** (1) No owner may receive compensation for wildlife interactions under this chapter unless the owner has, as determined by the department, first:

(a) Utilized applicable legal and practicable self-help preventive measures available to prevent the damage, includ-

ing the use of nonlethal methods and department-provided materials and services when available under RCW 77.36.100; and

(b) Exhausted all available compensation options available from nonprofit organizations that provide compensation to private property owners due to financial losses caused by wildlife interactions.

(2) In determining if the requirements of this section have been satisfied, the department may recognize and consider the following:

(a) Property losses may occur without future or anticipated knowledge of potential problems resulting in an owner being unable to take preemptive measures.

(b) Normal agricultural practices, animal husbandry practices, recognized standard management techniques, and other industry-recognized management practices may represent adequate preventative efforts.

(c) Under certain circumstances, as determined by the department, wildlife may not logistically or practicably be managed by nonlethal efforts.

(d) Not all available legal preventative efforts are cost-effective for the owner to practicably employ.

(e) There are certain effective preventative control options not available due to federal or state restrictions.

(f) Under certain circumstances, as determined by the department, permitting public hunting may not be a practicable self-help method due to the size and nature of the property, the property's setting, or the ability of the landowner to accommodate public access.

(3) An owner is not eligible to receive compensation if the damages are covered by insurance.

(4) The commission shall adopt rules implementing this section, including requirements that owners document nonlethal preventive efforts undertaken and all permits issued by the department under RCW 77.12.240 and 77.12.150. [2009 c 333 § 56.]

Effective date—Application—2009 c 333 §§ 53-66: See notes following RCW 77.36.010.

77.36.120 Department's duties. ***(Effective July 1, 2010.)*** The department shall establish:

(1) The form of affidavits or proof required to accompany all claims under this chapter;

(2) The process, time, and methods used to identify and assess damage, including the anticipated timeline for the initiation and conclusion of department action;

(3) How claims will be prioritized when available funds for reimbursement are limited;

(4) Timelines after the discovery of damage by which an owner must file a claim or notify the department;

(5) Protocols for an owner to follow if the owner wishes to undertake activities that would complicate the determination of damages, such as harvesting damaged crops;

(6) The process for determining damage assessments, including the role and selection of professional damage assessors and the responsibility for reimbursing third-party assessors for their services;

(7) Timelines for a claimant to accept, reject, or appeal a determination made by the department;

(8) The identification of instances when an owner would be ineligible for compensation;

(9) An appeals process for an owner eligible for compensation under RCW 77.36.100 who is denied a claim or feels the compensation is insufficient; and

(10) Other policies necessary for administering this chapter. [2009 c 333 § 57.]

Effective date—Application—2009 c 333 §§ 53-66: See notes following RCW 77.36.010.

77.36.130 Limit on cash compensation—Burden of proof. ***(Effective July 1, 2010.)*** (1) Except as otherwise provided in this section and as limited by RCW 77.36.100, 77.36.070, and 77.36.080, the cash compensation portion of each claim by the department under this chapter is limited to the lesser of:

(a) The value of the damage to the property by wildlife reduced by the amount of compensation provided to the claimant by any nonprofit organizations that provide compensation to private property owners due to financial losses caused by wildlife interactions, except that, subject to appropriation to pay compensation for damage to commercial livestock, the value of killed or injured commercial livestock may be no more than two hundred dollars per sheep, one thousand five hundred dollars per head of cattle, and one thousand five hundred dollars per horse; or

(b) Ten thousand dollars.

(2) The department may offer to pay a claim for an amount in excess of ten thousand dollars to the owners of commercial crops or commercial livestock filing a claim under RCW 77.36.100 only if the outcome of an appeal filed by the claimant under RCW 77.36.100 determines a payment higher than ten thousand dollars.

(3) All payments of claims by the department under this chapter must be paid to the owner of the damaged property and may not be assigned to a third party.

(4) The burden of proving all property damage, including damage to commercial crops and commercial livestock, belongs to the claimant. [2009 c 333 § 58.]

Effective date—Application—2009 c 333 §§ 53-66: See notes following RCW 77.36.010.

77.36.140 Chapter represents exclusive remedy. ***(Effective July 1, 2010.)*** This chapter represents the exclusive remedy against the state for damage caused by wildlife interactions. [2009 c 333 § 62.]

Effective date—Application—2009 c 333 §§ 53-66: See notes following RCW 77.36.010.

77.36.150 Review of rules and policies. ***(Effective July 1, 2010, until July 30, 2014.)*** The fish and wildlife commission shall formally review the rules and policies adopted under sections *53 through 66, chapter 333, Laws of 2009. If, in the process of reviewing the rules, the fish and wildlife commission identifies recommended statutory changes related to the subject of sections *53 through 66, chapter 333, Laws of 2009 and to the ability of the fish and wildlife commission to fulfill the intent of sections *53 through 66, chapter 333, Laws of 2009, those recommendations must be forwarded to the appropriate policy committees of the legislature during the regularly scheduled 2014 legislative session. [2009 c 333 § 64.]

***Reviser's note:** Section 53, chapter 333, Laws of 2009 was vetoed by the governor.

Expiration date—2009 c 333 § 64: "Section 64 of this act expires July 30, 2014." [2009 c 333 § 70.]

Effective date—Application—2009 c 333 §§ 53-66: See notes following RCW 77.36.010.

77.36.900 Decodified. ***(Effective July 1, 2010.)*** See Supplementary Table of Disposition of Former RCW Sections, this volume.

77.36.901 Decodified. ***(Effective July 1, 2010.)*** See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 77.44 RCW
WARM WATER GAME FISH ENHANCEMENT PROGRAM

Sections

77.44.050 Warm water game fish account—Created—Use of moneys.

77.44.050 Warm water game fish account—Created—Use of moneys. The warm water game fish account is hereby created in the state wildlife account created in RCW 77.12.170. Moneys in the account are subject to legislative appropriation and shall be used for the purpose of funding the warm water game fish enhancement program, including the development of warm water pond and lake habitat, culture of warm water game fish, improvement of warm water fish habitat, management of warm water fish populations, and other practical activities that will improve the fishing for warm water fish. Funds for warm water game fish as provided in RCW 77.32.440 shall not serve as replacement funding for department-operated warm water fish projects existing on December 31, 1994. [2009 c 333 § 43; 1999 c 235 § 1; 1996 c 222 § 5.]

Effective date—1999 c 235: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 10, 1999]." [1999 c 235 § 4.]

Effective dates—1996 c 222: See note following RCW 77.44.010.

Chapter 77.55 RCW
CONSTRUCTION PROJECTS IN STATE WATERS

Sections

77.55.011 Definitions.

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

(1) "Bed" means the land below the ordinary high water lines of state waters. This definition does not include irrigation ditches, canals, storm water runoff devices, or other artificial watercourses except where they exist in a natural watercourse that has been altered artificially.

(2) "Board" means the hydraulic appeals board created in RCW 77.55.301.

(3) "Commission" means the state fish and wildlife commission.

(4) "Department" means the department of fish and wildlife.

(5) "Director" means the director of the department of fish and wildlife.

(6) "Emergency" means an immediate threat to life, the public, property, or of environmental degradation.

(7) "Hydraulic project" means the construction or performance of work that will use, divert, obstruct, or change the natural flow or bed of any of the salt or freshwaters of the state.

(8) "Imminent danger" means a threat by weather, water flow, or other natural conditions that is likely to occur within sixty days of a request for a permit application.

(9) "Marina" means a public or private facility providing boat moorage space, fuel, or commercial services. Commercial services include but are not limited to overnight or liveaboard boating accommodations.

(10) "Marine terminal" means a public or private commercial wharf located in the navigable water of the state and used, or intended to be used, as a port or facility for the storing, handling, transferring, or transporting of goods to and from vessels.

(11) "Ordinary high water line" means the mark on the shores of all water that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in ordinary years as to mark upon the soil or vegetation a character distinct from the abutting upland. Provided, that in any area where the ordinary high water line cannot be found, the ordinary high water line adjoining saltwater is the line of mean higher high water and the ordinary high water line adjoining fresh water is the elevation of the mean annual flood.

(12) "Permit" means a hydraulic project approval permit issued under this chapter.

(13) "Sandbars" includes, but is not limited to, sand, gravel, rock, silt, and sediments.

(14) "Small scale prospecting and mining" means the use of only the following methods: Pans; nonmotorized sluice boxes; concentrators; and minirocker boxes for the discovery and recovery of minerals.

(15) "Spartina," "purple loosestrife," and "aquatic noxious weeds" have the same meanings as defined in RCW 17.26.020.

(16) "Streambank stabilization" means those projects that prevent or limit erosion, slippage, and mass wasting. These projects include, but are not limited to, bank resloping, log and debris relocation or removal, planting of woody vegetation, bank protection using rock or woody material or placement of jetties or groins, gravel removal, or erosion control.

(17) "Tide gate" means a one-way check valve that prevents the backflow of tidal water.

(18) "Waters of the state" and "state waters" means all salt and fresh waters waterward of the ordinary high water line and within the territorial boundary of the state. [2009 c 549 § 1028; 2005 c 146 § 101.]

Part headings not law—2005 c 146: "Part headings used in this act are not any part of the law." [2005 c 146 § 1007.]

Chapter 77.60 RCW
SHELLFISH

Sections

77.60.150 Oyster reserve land—Pilot project—Advisory committee—Lease administration.

77.60.150 Oyster reserve land—Pilot project—Advisory committee—Lease administration. (1) The department shall initiate a pilot project to evaluate the feasibility and potential of intensively culturing shellfish on currently nonproductive oyster reserve land in Puget Sound. The pilot program shall include no fewer than three long-term lease agreements with commercial shellfish growers. Except as provided in subsection (3) of this section, revenues from the lease of such lands shall be deposited in the oyster reserve land account created in RCW 77.60.160.

(2) The department shall form one advisory committee each for the Willapa Bay oyster reserve lands and the Puget Sound oyster reserve lands. The advisory committees shall make recommendations on management practices to conserve, protect, and develop oyster reserve lands. The advisory committees may make recommendations regarding the management practices on oyster reserve lands, in particular to ensure that they are managed in a manner that will: (a) Increase revenue through production of high-value shellfish; (b) not be detrimental to the market for shellfish grown on nonreserve lands; and (c) avoid negative impacts to existing shellfish populations. The advisory committees may also make recommendation on the distribution of funds in RCW 77.60.160(2)(a). The department shall attempt to structure each advisory committee to include equal representation between shellfish growers that participate in reserve sales and shellfish growers that do not.

(3) The department of natural resources, in consultation with the department of fish and wildlife, shall administer the leases for oyster reserves entered into under this chapter. In administering the leases, the department of natural resources shall exercise its authority under RCW 79.135.300. Vacation of state oyster reserves by the department shall not be a requirement for the department of natural resources to lease any oyster reserves under this section. The department of natural resources may recover reasonable costs directly associated with the administration of the leases for oyster reserves entered into under this chapter. All administrative fees collected by the department of natural resources pursuant to this section shall be deposited into the resource management cost account established in RCW 79.64.020. The department may not assess charges to recover the costs of consulting with the department of natural resources under this subsection.

(4) The Puget Sound pilot program shall not include the culture of geoduck. [2009 c 333 § 23; 2001 c 273 § 1.]

Chapter 77.65 RCW
FOOD FISH AND SHELLFISH—COMMERCIAL LICENSES

Sections

77.65.010 Commercial licenses and permits required—Exemption.
77.65.200 Commercial fishery licenses for food fish fisheries—Fees—Rules for species, gear, and areas.
77.65.370 Food fish guide license.
77.65.440 Alternate operator—Geoduck diver—Food fish guide—Fees.
77.65.480 Taxidermist, fur dealer, game fish guide, game farmer, anadromous game fish buyer—Licenses—Fish stocking and game contest permits.
77.65.510 Direct retail endorsement—Fee—Responsibilities of holder and alternate operators.

77.65.010 Commercial licenses and permits required—Exemption. (1) Except as otherwise provided by this title, a person must have a license or permit issued by the director in order to engage in any of the following activities:

(a) Commercially fish for or take food fish or shellfish;

(b) Deliver from a commercial fishing vessel food fish or shellfish taken for commercial purposes in offshore waters. As used in this subsection, "deliver" means arrival at a place or port, and includes arrivals from offshore waters to waters within the state and arrivals from state or offshore waters;

(c) Operate a charter boat or commercial fishing vessel engaged in a fishery;

(d) Engage in processing or wholesaling food fish or shellfish; or

(e) Act as a food fish guide for personal use in freshwater rivers and streams, except that a charter boat license is required to operate a vessel from which a person may for a fee fish for food fish in state waters listed in RCW 77.65.150(4)(b).

(2) No person may engage in the activities described in subsection (1) of this section unless the licenses or permits required by this title are in the person's possession, and the person is the named license holder or an alternate operator designated on the license and the person's license is not suspended.

(3) A valid Oregon license that is equivalent to a license under this title is valid in the concurrent waters of the Columbia river if the state of Oregon recognizes as valid the equivalent Washington license. The director may identify by rule what Oregon licenses are equivalent.

(4) No license or permit is required for the production or harvesting of private sector cultured aquatic products as defined in RCW 15.85.020 or for the delivery, processing, or wholesaling of such aquatic products. However, if a means of identifying such products is required by rules adopted under RCW 15.85.060, the exemption from licensing or permit requirements established by this subsection applies only if the aquatic products are identified in conformance with those rules. [2009 c 333 § 7; 2005 c 20 § 1; 1998 c 190 § 93; 1997 c 58 § 883; 1993 c 340 § 2; 1991 c 362 § 1; 1985 c 457 § 18; 1983 1st ex.s. c 46 § 101; 1959 c 309 § 2; 1955 c 12 § 75.28.010. Prior: 1949 c 112 § 73; Rem. Supp. 1949 § 5780-511. Formerly RCW 75.28.010.]

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

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

Finding—Intent—1993 c 340: "The legislature finds that the laws governing commercial fishing licensing in this state are highly complex and increasingly difficult to administer and enforce. The current laws governing commercial fishing licenses have evolved slowly, one section at a time, over decades of contention and changing technology, without general consideration for how the totality fits together. The result has been confusion and litigation among commercial fishers. Much of the confusion has arisen because the license holder in most cases is a vessel, not a person. The legis-

lature intends by this act to standardize licensing criteria, clarify licensing requirements, reduce complexity, and remove inequities in commercial fishing licensing. The legislature intends that the license fees stated in this act shall be equivalent to those in effect on January 1, 1993, as adjusted under section 19, chapter 316, Laws of 1989." [1993 c 340 § 1.]

Captions not law—1993 c 340: "Section headings as used in this act do not constitute any part of the law." [1993 c 340 § 57.]

Effective date—1993 c 340: "This act shall take effect January 1, 1994." [1993 c 340 § 58.]

Severability—1993 c 340: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1993 c 340 § 59.]

77.65.200 Commercial fishery licenses for food fish fisheries—Fees—Rules for species, gear, and areas. (1) This section establishes commercial fishery licenses required for food fish fisheries and the annual fees for those licenses. As used in this section, "food fish" does not include salmon. The director may issue a limited-entry commercial fishery license only to a person who meets the qualifications established in applicable governing sections of this title.

Fishery (Governing section(s))	Annual Fee Resident	Annual Fee Nonresident	Vessel Required?	Limited Entry?
(a) Baitfish Lampara	$185	$295	Yes	No
(b) Baitfish purse seine	$530	$985	Yes	No
(c) Bottom fish jig	$130	$185	Yes	No
(d) Bottom fish pot	$130	$185	Yes	No
(e) Bottom fish troll	$130	$185	Yes	No
(f) Carp	$130	$185	No	No
(g) Columbia river smelt	$380	$685	No	No
(h) Dog fish set net	$130	$185	Yes	No
(i) Emerging commercial fishery (RCW 77.70.160 and 77.65.400)	$185	$295	Determined by rule	Determined by rule
(j) Food fish drag seine	$130	$185	Yes	No
(k) Food fish set line	$130	$185	Yes	No
(l) Food fish trawl-Non-Puget Sound	$240	$405	Yes	No
(m) Food fish trawl-Puget Sound	$185	$295	Yes	No
(n) Herring dip bag net (RCW 77.70.120)	$175	$275	Yes	Yes
(o) Herring drag seine (RCW 77.70.120)	$175	$275	Yes	Yes
(p) Herring gill net (RCW 77.70.120)	$175	$275	Yes	Yes
(q) Herring Lampara (RCW 77.70.120)	$175	$275	Yes	Yes
(r) Herring purse seine (RCW 77.70.120)	$175	$275	Yes	Yes
(s) Herring spawn-on-kelp (RCW 77.70.210)	N/A	N/A	Yes	Yes
(t) Sardine purse seine (RCW 77.70.480)	$185	$295	Yes	Yes
(u) Sardine purse seine temporary (RCW 77.70.480)	$185	$295	Yes	No
(v) Smelt dip bag net	$130	$185	No	No
(w) Smelt gill net	$380	$685	Yes	No
(x) Whiting-Puget Sound (RCW 77.70.130)	$295	$520	Yes	Yes

(2) The director may by rule determine the species of food fish that may be taken with the commercial fishery licenses established in this section, the gear that may be used with the licenses, and the areas or waters in which the licenses may be used. Where a fishery license has been established for a particular species, gear, geographical area, or combination thereof, a more general fishery license may not be used to take food fish in that fishery. [2009 c 331 § 4; 2000 c 107 § 41; 1993 sp.s. c 17 § 38; (1993 c 340 § 15 repealed by 1993 sp.s. c 17 § 47); 1989 c 316 § 6; 1983 1st ex.s. c 46 § 117; 1965 ex.s. c 73 § 3; 1959 c 309 § 11; 1955 c 12 § 75.28.120. Prior: 1951 c 271 § 10; 1949 c 112 § 69(2); Rem. Supp. 1949 § 5780-507(2). Formerly RCW 75.28.120.]

Contingent effective date—1993 sp.s. c 17 §§ 34-47: See note following RCW 77.65.020.

Finding—Contingent effective date—Severability—1993 sp.s. c 17: See notes following RCW 77.32.520.

Limitation on commercial herring fishing: RCW 77.70.120.

77.65.370 Food fish guide license. (1) A person shall not offer or perform the services of a food fish guide without a food fish guide license in the taking of food fish for personal use in freshwater rivers and streams, except that a charter boat license is required to operate a vessel from which a person may for a fee fish for food fish in state waters listed in RCW 77.65.150(4)(b).

(2) Only an individual at least sixteen years of age may hold a food fish guide license. No individual may hold more than one food fish guide license. [2009 c 333 § 8; 1998 c 190 § 98; 1993 c 340 § 26; 1991 c 362 § 2. Formerly RCW 75.28.710.]

Finding, intent—Captions not law—Effective date—Severability—1993 c 340: See notes following RCW 77.65.010.

77.65.440 Alternate operator—Geoduck diver—Food fish guide—Fees. The director shall issue the personal licenses listed in this section according to the requirements of this title. The licenses and their annual fees are:

Personal License	Annual Fee (RCW 77.95. Surcharge) Resident	Annual Fee (RCW 77.95. Surcharge) Nonresident	Governing Section
(1) Alternate Operator	$ 35	$ 35	RCW 77.65.130
(2) Geoduck Diver	$185	$295	RCW 77.65.410
(3) Food Fish Guide	$130 (plus $20)	$630 (plus $100)	RCW 77.65.370

[2009 c 333 § 9; 2000 c 107 § 55; 1993 sp.s. c 17 § 42. Formerly RCW 75.28.780.]

Contingent effective date—1993 sp.s. c 17 §§ 34-47: See note following RCW 77.65.020.

Finding—Contingent effective date—Severability—1993 sp.s. c 17: See notes following RCW 77.32.520.

77.65.480 Taxidermist, fur dealer, game fish guide, game farmer, anadromous game fish buyer—Licenses—Fish stocking and game contest permits. (1) A taxidermy license allows the holder to practice taxidermy for commercial purposes, as that term is defined in RCW 77.15.110. The fee for this license is one hundred eighty dollars.

(2) A fur dealer's license allows the holder to purchase, receive, or resell raw furs for commercial purposes, as that term is defined in RCW 77.15.110. The fee for this license is one hundred eighty dollars.

(3) A game fish guide license allows the holder to offer or perform the services of a game fish guide in the taking of game fish. The fee for this license is one hundred eighty dollars for a resident and six hundred dollars for a nonresident.

(4) A game farm license allows the holder to operate a game farm to acquire, breed, grow, keep, and sell wildlife under conditions prescribed by the rules adopted pursuant to this title. The fee for this license is seventy-two dollars for the first year and forty-eight dollars for each following year.

(5) A game fish stocking permit allows the holder to release game fish into the waters of the state as prescribed by rule of the commission. The fee for this permit is twenty-four dollars.

(6) A fishing or field trial permit allows the holder to promote, conduct, hold, or sponsor a fishing or field trial contest in accordance with rules of the commission. The fee for a fishing contest permit is twenty-four dollars. The fee for a field trial contest permit is twenty-four dollars.

(7)(a) An anadromous game fish buyer's license allows the holder to purchase or sell steelhead trout and other anadromous game fish harvested by Indian fishers lawfully exercising fishing rights reserved by federal statute, treaty, or executive order, under conditions prescribed by rule of the director. The fee for this license is one hundred eighty dollars.

(b) An anadromous game fish buyer's license is not required for those businesses that buy steelhead trout and other anadromous game fish from Washington licensed game fish dealers and sell solely at retail. [2009 c 333 § 11; 1991 sp.s. c 7 § 4; 1987 c 506 § 83; 1985 c 464 § 5; 1983 c 284 § 3; 1981 c 310 § 25; 1980 c 78 § 115; 1975 1st ex.s. c 15 § 30. Formerly RCW 77.32.211.]

Effective date—1991 sp.s. c 7: See note following RCW 77.65.450.

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—1985 c 464: See note following RCW 77.65.450.

Findings—Intent—1983 c 284: See note following RCW 82.27.020.

Effective dates—Legislative intent—1981 c 310: See notes following RCW 77.12.170.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

Effective dates—1975 1st ex.s. c 15: See note following RCW 77.65.450.

77.65.510 Direct retail endorsement—Fee—Responsibilities of holder and alternate operators. (1) The department must establish and administer a direct retail endorsement to serve as a single license that permits a Washington license holder or alternate operator to commercially harvest retail-eligible species and to clean, dress, and sell his or her catch directly to consumers at retail, including over the internet. The direct retail endorsement must be issued as an optional addition to all holders of: (a) A commercial fishing license for retail-eligible species that the department offers under this chapter; and (b) an alternate operator license who are designated as an alternate operator on a commercial fishing license for retail eligible species.

(2) The direct retail endorsement must be offered at the time of application for the qualifying commercial fishing license. Individuals in possession of a qualifying commercial fishing license issued under this chapter, and alternate operators designated on such a license, may add a direct retail endorsement to their current license at any time. Individuals who do not have a commercial fishing license for retail-eligible species issued under this chapter, and who are not designated as alternate operators on such a license, may not receive a direct retail endorsement. The costs, conditions, responsibilities, and privileges associated with the endorsed commercial fishing license is not affected or altered in any way by the addition of a direct retail endorsement. These costs include the base cost of the license and any revenue and excise taxes.

(3) An individual need only add one direct retail endorsement to his or her license portfolio. If a direct retail endorsement is selected by an individual holding more than one commercial fishing license issued under this chapter, a single direct retail endorsement is considered to be added to all qualifying commercial fishing licenses held by that individual, and is the only license required for the individual to sell at retail any retail-eligible species permitted by all of the underlying endorsed licenses. If a direct retail endorsement is selected by an individual designated as an alternate operator on more than one commercial license issued under this chapter, a single direct retail endorsement is the only license required for the individual to sell at retail any retail-eligible species permitted by all of the underlying endorsed licenses on which the individual is designated as an alternate operator. The direct retail endorsement applies only to the Washington license holder or alternate operator obtaining the endorsement.

(4) In addition to any fees charged for the endorsed licenses and harvest documentation as required by this chapter or the rules of the department, the department may set a reasonable annual fee not to exceed the administrative costs to the department for a direct retail endorsement.

(5) The holder of a direct retail endorsement is responsible for documenting the commercial harvest of salmon and crab according to the provisions of this chapter, the rules of the department for a wholesale fish dealer, and the reporting requirements of the endorsed license. Any retail-eligible species caught by the holder of a direct retail endorsement must be documented on fish tickets.

(6) The direct retail endorsement must be displayed in a readily visible manner by the seller wherever and whenever a sale to someone other than a licensed wholesale dealer occurs. The commission may require that the holder of a direct retail endorsement notify the department up to eighteen hours before conducting an in-person sale of retail-eligible species, except for in-person sales that have a cumulative retail sales value of less than one hundred fifty dollars in a twenty-four hour period that are sold directly from the vessel. For sales occurring in a venue other than in person, such as over the internet, through a catalog, or on the phone, the direct retail endorsement number of the seller must be provided to the buyer both at the time of sale and the time of delivery. All internet sales must be conducted in accordance with federal laws and regulations.

(7) The direct retail endorsement is to be held by a natural person and is not transferrable or assignable. If the endorsed license is transferred, the direct retail endorsement immediately becomes void, and the transferor is not eligible for a full or prorated reimbursement of the annual fee paid for

the direct retail endorsement. Upon becoming void, the holder of a direct retail endorsement must surrender the physical endorsement to the department.

(8) The holder of a direct retail endorsement must abide by the provisions of Title 69 RCW as they apply to the processing and retail sale of seafood. The department must distribute a pamphlet, provided by the department of agriculture, with the direct retail endorsement generally describing the labeling requirements set forth in chapter 69.04 RCW as they apply to seafood.

(9) The holder of a qualifying commercial fishing license issued under this chapter, or an alternate operator designated on such a license, must either possess a direct retail endorsement or a wholesale dealer license provided for in RCW 77.65.280 in order to lawfully sell their catch or harvest in the state to anyone other than a licensed wholesale dealer.

(10) The direct retail endorsement entitles the holder to sell a retail-eligible species only at a temporary food service establishment as that term is defined in RCW 69.06.045, or directly to a restaurant or other similar food service business. [2009 c 195 § 1; 2003 c 387 § 2; 2002 c 301 § 2.]

Finding—2002 c 301: "The legislature finds that commercial fishing is vitally important not just to the economy of Washington, but also to the cultural heritage of the maritime communities in the state. Fisher men and women have a long and proud history in the Pacific Northwest. State and local governments should seek out ways to enable and encourage these professionals to share the rewards of their craft with the nonfishing citizens of and visitors to the state of Washington by encouraging the exploration and development of new niche markets." [2002 c 301 § 1.]

Effective date—2002 c 301: "This act takes effect July 1, 2002." [2002 c 301 § 12.]

Chapter 77.70 RCW
LICENSE LIMITATION PROGRAMS

Sections

77.70.005 Definitions.
77.70.480 Pacific sardines—Purse seine fishery license or temporary annual fishery permit required.
77.70.490 Pacific sardines—Purse seine fishery license—Adoption of rules regarding bycatch.
77.70.500 Crab pot removal permit—Penalty.

77.70.005 Definitions. The definitions in this section apply throughout this chapter and related rules adopted by the department unless the context clearly requires otherwise.

(1) "Deliver" or "delivery" means arrival at a place or port, and includes arrivals from offshore waters to waters within the state and arrivals ashore from offshore waters.

(2) "Pacific sardine" and "pilchard" means the species *Sardinops sagax*. [2009 c 331 § 1.]

77.70.480 Pacific sardines—Purse seine fishery license or temporary annual fishery permit required. (1) A Washington sardine purse seine fishery license or temporary annual fishery permit is required to use purse seine gear to fish for or possess Pacific sardines in offshore waters. This requirement does not affect persons authorized to fish for or possess sardines in offshore waters under a valid Oregon or California license or permit.

(2) A Washington sardine purse seine fishery license or temporary annual fishery permit is required to deliver Pacific sardines into the state.

(3) Washington sardine purse seine fishery licenses and temporary annual fishery permits require vessel designation under RCW 77.65.100.

(4) Pacific sardines may not be taken or retained in state waters except for incidental harvest authorized by rule of the department. [2009 c 331 § 2.]

77.70.490 Pacific sardines—Purse seine fishery license—Adoption of rules regarding bycatch. (1) A Washington Pacific sardine purse seine fishery license:

(a) May only be issued to a person that held a coastal pilchard experimental fishery permit in 2008, except as otherwise provided in this section;

(b) Must be renewed annually to remain active; and

(c) Subject to the restrictions of subsections (6) and (7) of this section and RCW 77.65.040, is transferable.

(2) A Washington Pacific sardine purse seine fishery license may be issued to any person that held a coastal pilchard experimental fishery permit in 2005, 2006, or 2007 and is precluded from qualifying under subsection (1) of this section because the vessel designated on the permit sank prior to 2008.

(3) Beginning in 2010, after taking into consideration the status of the Pacific sardine population, the impact of removal of sardines and other forage fish to the marine ecosystem, including the effect on endangered marine species, and the market for Pacific sardines in the state, the director may issue:

(a) A Washington Pacific sardine purse seine fishery license to any person provided that the issuance would not raise the number of licenses beyond the number initially issued in 2009;

(b) A Washington Pacific sardine purse seine temporary annual fishery permit to any person if the combined number of active Washington Pacific sardine purse seine fishery licenses and annual temporary permits already issued during the year is less than twenty-five.

(4) The annual fee for a Washington Pacific sardine purse seine fishery license is one hundred eighty-five dollars for residents and two hundred ninety-five dollars for nonresidents.

(5) The fee for a Washington Pacific sardine purse seine temporary annual fishery permit is one hundred eighty-five dollars for residents and two hundred ninety-five dollars for nonresidents. A temporary annual fishery permit expires at the end of the calendar year in which the permit is issued.

(6) Only a person who owns or operates the vessel designated on the license or permit may hold a Washington Pacific sardine purse seine fishery license or temporary annual fishery permit.

(7) A person may not own or hold an ownership interest in more than two Washington Pacific sardine purse seine fishery licenses.

(8) The director shall adopt rules that require a person fishing under a Washington Pacific sardine purse seine fishery license or a temporary annual permit to minimize bycatch, and to the extent bycatch cannot be avoided, to minimize the mortality of such bycatch. [2009 c 331 § 3.]

77.70.500 Crab pot removal permit—Penalty. (1)(a) As part of a coastal commercial Dungeness crab pot removal program, the department shall issue a crab pot removal permit that allows the participants in the Dungeness crab-coastal fishery created in RCW 77.70.280 to remove crab pots belonging to state commercial licensed crab fisheries from coastal marine waters after the close of the primary commercial Dungeness crab-coastal harvest season, regardless of whether the crab pot was originally set by the participant or not.

(b) Beginning fifteen days after the close of the primary commercial Dungeness crab-coastal harvest season, any individual with a current commercial Dungeness crab-coastal license and a valid crab pot removal permit issued by the department may remove a crab pot or crab pots used to harvest Dungeness crabs remaining in coastal marine waters after the close of the primary commercial Dungeness crab-coastal harvest season.

(c) In cooperation with individuals with a current commercial Dungeness crab-coastal license, the department may expand the coastal commercial Dungeness crab pot removal program to those areas closed to commercial Dungeness crab harvest prior to the end of the primary season.

(d) Nothing in this section prohibits the department from exempting certain crab pots from the coastal commercial Dungeness crab pot removal program or from restricting crab pot removal activities to specific geographic areas.

(e) The department may adopt rules to implement this subsection (1).

(2) An individual participating in permitted crab pot removal activities in coastal marine waters who has a valid crab pot removal permit, and who adheres to the provisions of the permit as they relate to crab pot removal, is exempt from complying with the lost and found property provisions in chapter 63.21 RCW. The individual who removes the crab pot under a valid crab pot removal permit takes the property free and clear of all claims of the owner or previous holder and free and clear of all individuals claiming ownership under the previous owner.

(3)(a) A person is guilty of unlawful use of a crab pot removal permit if the person:

(i) Violates any terms or conditions of the permit issued under this section; or

(ii) Violates any rule of the department applicable to the requirement for, issuance of, or use of the permit.

(b) Unlawful use of a crab pot removal permit is a misdemeanor. [2009 c 355 § 1.]

Chapter 77.85 RCW
SALMON RECOVERY

Sections

77.85.005 Findings—Intent.
77.85.020 Consolidated report on salmon recovery and watershed health.
77.85.030 Governor's salmon recovery office—Purpose and duties.
77.85.050 Habitat project lists.
77.85.090 Southwest Washington salmon recovery region—Created—Recognition as a regional recovery organization—Puget Sound salmon recovery organizations.
77.85.100 Repealed.
77.85.140 Habitat project lists—Tracking of funds.
77.85.150 Statewide salmon recovery strategy—Prospective application.
77.85.200 Salmon and steelhead recovery program—Management board—Duties.
77.85.230 Intertidal salmon enhancement plan—Elements—Initial and final plan.
77.85.250 Forum on monitoring salmon recovery and watershed health—Creation—Duties—Report to the governor and legislature—Adoption of general high-level indicators for salmon recovery and watershed health. *(Expires June 30, 2011.)*

77.85.005 Findings—Intent. The legislature finds that repeated attempts to improve salmonid fish runs throughout the state of Washington have failed to avert listings of salmon and steelhead runs as threatened or endangered under the federal endangered species act (16 U.S.C. Sec. 1531 et seq.). These listings threaten the sport, commercial, and tribal fishing industries as well as the economic well-being and vitality of vast areas of the state. It is the intent of the legislature to begin activities required for the recovery of salmon stocks as soon as possible, although the legislature understands that successful recovery efforts may not be realized for many years because of the life cycle of salmon and the complex array of natural and human-caused problems they face.

The legislature finds that it is in the interest of the citizens of the state of Washington for the state to retain primary responsibility for managing the natural resources of the state, rather than abdicate those responsibilities to the federal government, and that the state may best accomplish this objective by integrating local and regional recovery activities into a statewide strategy that can make the most effective use of provisions of federal laws allowing for a state lead in salmon recovery, delivered through implementation activities consistent with regional and watershed recovery plans. The legislature also finds that a statewide salmon recovery strategy must be developed and implemented through an active public involvement process in order to ensure public participation in, and support for, salmon recovery. The legislature also finds that there is a substantial link between the provisions of the federal endangered species act and the federal clean water act (33 U.S.C. Sec. 1251 et seq.). The legislature further finds that habitat restoration is a vital component of salmon recovery efforts. Therefore, it is the intent of the legislature to specifically address salmon habitat restoration in a coordinated manner and to develop a structure that allows for the coordinated delivery of federal, state, and local assistance to communities for habitat projects that will assist in the recovery and enhancement of salmon stocks. A strong watershed-based locally implemented plan is essential for local, regional, and statewide salmon recovery.

The legislature also finds that credible scientific review and oversight is essential for any salmon recovery effort to be successful.

The legislature further finds that it is important to monitor the overall health of the salmon resource to determine if recovery efforts are providing expected returns. It is important to monitor salmon habitat projects and salmon recovery activities to determine their effectiveness in order to secure federal acceptance of the state's approach to salmon recovery. Adaptive management cannot exist without monitoring. For these reasons, the legislature believes that a coordinated and integrated monitoring system should be developed and implemented.

The legislature therefore finds that a coordinated framework for responding to the salmon crisis is needed immediately. To that end, the governor's salmon recovery office

should be created to provide overall coordination of the state's response; an independent science panel is needed to provide scientific review and oversight; a coordinated state funding process should be established through a salmon recovery funding board; the appropriate local or tribal government should provide local leadership in identifying and sequencing habitat projects to be funded by state agencies; habitat projects should be implemented without delay; and a strong locally based effort to restore salmon habitat should be established by providing a framework to allow citizen volunteers to work effectively. [2009 c 345 § 9; 2005 c 309 § 1; 1999 sp.s. c 13 § 1; 1998 c 246 § 1. Formerly RCW 75.46.005.]

Finding—Intent—2009 c 345: See notes following RCW 77.85.030.

Severability—1999 sp.s. c 13: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1999 sp.s. c 13 § 24.]

Effective date—1999 sp.s. c 13: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1999." [1999 sp.s. c 13 § 25.]

77.85.020 Consolidated report on salmon recovery and watershed health. (1) Beginning December 2010, the recreation and conservation office shall produce a biennial report on the statewide status of salmon recovery and watershed health, summarize projects and programs funded by the salmon recovery funding board, and summarize progress as measured by high-level indicators and state agency compliance with applicable protocols established by the forum for monitoring salmon recovery and watershed health. The report must be a consolidation of the current reporting activities, including the salmon recovery funding board and the forum on monitoring salmon recovery and watershed health, on the status of salmon recovery and watershed health in Washington state, in accordance with RCW 77.85.250(8). The report shall also include a high-level status report on watershed planning efforts under chapter 90.82 RCW as summarized by the department of ecology and on salmon recovery and watershed planning as summarized by the Puget Sound partnership. The report's introduction must include a list of high-level questions related to the status of watershed health and salmon recovery to help decision makers and the public respond to salmon recovery and watershed health management needs.

(2) The department, the department of ecology, the department of natural resources, and the state conservation commission shall provide to the recreation and conservation office information requested by the office necessary to prepare the consolidated report on salmon recovery and watershed health. [2009 c 345 § 4; 2007 c 444 § 2; 2005 c 309 § 3; 1998 c 246 § 4. Formerly RCW 75.46.030.]

Finding—Intent—2009 c 345: See notes following RCW 77.85.030.

77.85.030 Governor's salmon recovery office—Purpose and duties. (1) The governor's salmon recovery office shall coordinate state strategy to allow for salmon recovery to healthy sustainable population levels with productive commercial and recreational fisheries. A primary purpose of the office is to coordinate and assist in the development, implementation, and revision of regional salmon recovery plans as an integral part of a statewide strategy developed consistent with the guiding principles and procedures under RCW 77.85.150.

(2) The governor's salmon recovery office is also responsible for maintaining the statewide salmon recovery strategy to reflect applicable provisions of regional recovery plans, habitat protection and restoration plans, water quality plans, and other private, local, regional, state agency and federal plans, projects, and activities that contribute to salmon recovery.

(3) The governor's salmon recovery office shall also work with regional salmon recovery organizations on salmon recovery issues in order to ensure a coordinated and consistent statewide approach to salmon recovery and shall work with federal agencies to accomplish implementation of federal commitments in the recovery plans.

(4) The governor's salmon recovery office may also:

(a) Assist state agencies, local governments, landowners, and other interested parties in obtaining federal assurances that plans, programs, or activities are consistent with fish recovery under the federal endangered species act;

(b) Act as liaison to local governments, the state congressional delegation, the United States congress, federally recognized tribes, and the federal executive branch agencies for issues related to the state's salmon recovery plans;

(c) Provide periodic reports pursuant to RCW 77.85.020;

(d) Provide, as appropriate, technical and administrative support to science panels on issues pertaining to salmon recovery;

(e) In cooperation with the regional recovery organizations, prepare a timeline and implementation plan that, together with a schedule and recommended budget, identifies specific actions in regional recovery plans for state agency actions and assistance necessary to implement local and regional recovery plans; and

(f) As necessary, provide recommendations to the legislature that would further the success of salmon recovery, including recommendations for state agency actions in the succeeding biennium and state financial and technical assistance for projects and activities to be undertaken in local and regional salmon recovery plans. The recommendations may include:

(i) The need to expand or improve nonregulatory programs and activities; and

(ii) The need for state funding assistance to recovery activities and projects.

(5) For administrative purposes, the governor's salmon recovery office is located within the recreation and conservation office. [2009 c 345 § 2; 2007 c 444 § 3; 2005 c 309 § 4; 2000 c 107 § 93; 1999 sp.s. c 13 § 8; 1998 c 246 § 5. Formerly RCW 75.46.040.]

Finding—2009 c 345: "The legislature finds that:

(1) Washington has made significant investments in watershed-based activities, including the establishment of water resource inventory area (WRIA) planning units and lead agencies, lead entities, and regional salmon recovery organizations across the state. Washington watersheds have developed subbasin plans under the Northwest power and conservation council and national oceanic and atmospheric administration-approved regional salmon recovery plans that include locally prioritized salmon recovery projects;

(2) The governor's salmon recovery office was established to support the development and implementation of regional salmon recovery plans, to

assist local governments in obtaining federal assurances, and to issue a biennial state of the salmon report;

(3) The salmon recovery funding board provides grants for salmon recovery and the forum on monitoring salmon recovery and watershed health works to provide greater coordination on monitoring. Administrative support for the board and the forum are provided by the recreation and conservation office;

(4) Lead entity funding to support infrastructure and capacity needs is provided through the recreation and conservation office, which contracts with the department of fish and wildlife to implement the program. Funding for WRIA planning units and lead agencies to develop and implement watershed-based plans under RCW 90.82.040 is provided by the department of ecology; and

(5) Currently, state watershed and salmon recovery-based programs are split among several state agencies or offices. Efficient implementation of these efforts will be enhanced by promoting consolidation and integration of their activities and programs. In addition, consolidation of reporting benefits the public and decision makers regarding watershed health, which includes salmon recovery. It is also the intent of the legislature, in cooperation with local and regional officials, and respecting the ability of local citizens and officials to organize in ways best suited to address local needs, to encourage the development of incentives that consolidate existing processes and promote more effective implementation of salmon recovery plans and watershed planning and implementation." [2009 c 345 § 1.]

Intent—2009 c 345: "Nothing in this act is intended to amend chapter 90.71 RCW." [2009 c 345 § 14.]

Effective date—2007 c 444 § 3: "Section 3 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect June 30, 2007." [2007 c 444 § 9.]

Severability—Effective date—1999 sp.s. c 13: See notes following RCW 77.85.005.

77.85.050 Habitat project lists. (1)(a) Counties, cities, and tribal governments must jointly designate, by resolution or by letters of support, the area for which a habitat project list is to be developed and the lead entity that is to be responsible for submitting the habitat project list. No project included on a habitat project list shall be considered mandatory in nature and no private landowner may be forced or coerced into participation in any respect. The lead entity may be a county, city, conservation district, special district, tribal government, regional recovery organization, or other entity.

(b) The lead entity shall establish a committee that consists of representative interests of counties, cities, conservation districts, tribes, environmental groups, business interests, landowners, citizens, volunteer groups, regional fish enhancement groups, and other habitat interests. The purpose of the committee is to provide a citizen-based evaluation of the projects proposed to promote salmon habitat.

(c) The committee shall compile a list of habitat projects, establish priorities for individual projects, define the sequence for project implementation, and submit these activities as the habitat project list. The committee shall also identify potential federal, state, local, and private funding sources.

(2) The area covered by the habitat project list must be based, at a minimum, on a WRIA, combination of WRIAs, or any other area as agreed to by the counties, cities, and tribes in resolutions or in letters of support meeting the requirements of this subsection. Preference will be given to projects in an area that contain a salmon species that is listed or proposed for listing under the federal endangered species act.

(3) The lead entity shall submit the habitat project list to the salmon recovery funding board in accordance with procedures adopted by the board.

(4) The recreation and conservation office shall administer funding to support the functions of lead entities. [2009 c 345 § 3; 2009 c 333 § 25; 2005 c 309 § 6; 1999 sp.s. c 13 § 11; 1998 c 246 § 7. Formerly RCW 75.46.060.]

Reviser's note: This section was amended by 2009 c 333 § 25 and by 2009 c 345 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Finding—Intent—2009 c 345: See notes following RCW 77.85.030.

Severability—Effective date—1999 sp.s. c 13: See notes following RCW 77.85.005.

77.85.090 Southwest Washington salmon recovery region—Created—Recognition as a regional recovery organization—Puget Sound salmon recovery organizations. (1) The southwest Washington salmon recovery region, whose boundaries are provided in chapter 60, Laws of 1998, is created.

(2) Lead entities within a salmon recovery region that agree to form a regional salmon recovery organization may be recognized by the governor's salmon recovery office created in RCW 77.85.030 as a regional recovery organization. The regional recovery organization may plan, coordinate, and monitor the implementation of a regional recovery plan in accordance with RCW 77.85.150. Regional recovery organizations existing as of July 24, 2005, that have developed draft recovery plans approved by the governor's salmon recovery office by July 1, 2005, may continue to plan, coordinate, and monitor the implementation of regional recovery plans.

(3) Beginning January 1, 2008, the leadership council, created under chapter 90.71 RCW, shall serve as the regional salmon recovery organization for Puget Sound salmon species, except for the program known as the Hood Canal summer chum evolutionarily significant unit area, which the Hood Canal coordinating council shall continue to administer under chapter 90.88 RCW. [2009 c 345 § 10. Prior: 2007 c 444 § 5; 2007 c 341 § 49; 2005 c 309 § 7; 2000 c 107 § 99; 1998 c 246 § 12. Formerly RCW 75.46.110.]

Finding—Intent—2009 c 345: See notes following RCW 77.85.030.

Severability—Effective date—2007 c 341: See RCW 90.71.906 and 90.71.907.

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

77.85.140 Habitat project lists—Tracking of funds. (1) Habitat project lists shall be submitted to the salmon recovery funding board for funding at least once a year on a schedule established by the board. The board shall provide the legislature with a list of the proposed projects and a list of the projects funded by October 1st of each year for informational purposes. Project sponsors who complete salmon habitat projects approved for funding from habitat project lists and have met grant application deadlines will be paid by the salmon recovery funding board within thirty days of project completion.

(2) The recreation and conservation office shall track all funds allocated for salmon habitat projects and salmon recovery activities on behalf of the board, including both funds allocated by the board and funds allocated by other state or federal agencies for salmon recovery or water quality

improvement. [2009 c 518 § 9; 2009 c 345 § 8; 2007 c 241 § 22; 2001 c 303 § 1; 2000 c 107 § 103; 1999 sp.s. c 13 § 6. Formerly RCW 75.46.180.]

Reviser's note: This section was amended by 2009 c 345 § 8 and by 2009 c 518 § 9, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Finding—Intent—2009 c 345: See notes following RCW 77.85.030.

Intent—Effective date—2007 c 241: See notes following RCW 79A.25.005.

Severability—Effective date—1999 sp.s. c 13: See notes following RCW 77.85.005.

77.85.150 Statewide salmon recovery strategy—Prospective application. (1) The governor shall, with the assistance of the governor's salmon recovery office, maintain and revise, as appropriate, a statewide salmon recovery strategy.

(2) The governor and the governor's salmon recovery office shall be guided by the following considerations in maintaining and revising the strategy:

(a) The strategy should identify statewide initiatives and responsibilities with regional recovery plans and local watershed initiatives as the principal means for implementing the strategy;

(b) The strategy should emphasize collaborative, incentive-based approaches;

(c) The strategy should address all factors limiting the recovery of Washington's listed salmon stocks, including habitat and water quality degradation, harvest and hatchery management, inadequate streamflows, and other barriers to fish passage. Where other limiting factors are beyond the state's jurisdictional authorities to respond to, such as some natural predators and high seas fishing, the strategy shall include the state's requests for federal action to effectively address these factors;

(d) The strategy should identify immediate actions necessary to prevent extinction of a listed salmon stock, establish performance measures to determine if restoration efforts are working, recommend effective monitoring and data management, and recommend to the legislature clear and certain measures to be implemented if performance goals are not met;

(e) The strategy shall rely on the best scientific information available and provide for incorporation of new information as it is obtained;

(f) The strategy should seek a fair allocation of the burdens and costs upon economic and social sectors of the state whose activities may contribute to limiting the recovery of salmon; and

(g) The strategy should seek clear measures and procedures from the appropriate federal agencies for removing Washington's salmon stocks from listing under the federal act.

(3) If the strategy is updated, an active and thorough public involvement process, including early and meaningful opportunity for public comment, must be utilized. In obtaining public comment, the governor's salmon recovery office shall work with regional salmon recovery organizations throughout the state and shall encourage regional and local recovery planning efforts to ensure an active public involvement process.

(4) This section shall apply prospectively only and not retroactively. Nothing in this section shall be construed to invalidate actions taken in recovery planning at the local, regional, or state level prior to July 1, 1999. [2009 c 345 § 11; 2007 c 444 § 6; 2005 c 309 § 9; 1999 sp.s. c 13 § 9. Formerly RCW 75.46.190.]

Finding—Intent—2009 c 345: See notes following RCW 77.85.030.

Severability—Effective date—1999 sp.s. c 13: See notes following RCW 77.85.005.

77.85.200 Salmon and steelhead recovery program—Management board—Duties. (1) A program for salmon and steelhead recovery is established in Clark, Cowlitz, Lewis, Skamania, and Wahkiakum counties within the habitat areas classified as the lower Columbia evolutionarily significant units by the federal national marine fisheries service. The management board created under subsection (2) of this section is responsible for developing and overseeing the implementation of the habitat portion of the salmon and steelhead recovery plan and is empowered to receive and disburse funds for the salmon and steelhead recovery initiatives. The management board created pursuant to this section shall constitute the lead entity and the committee established under RCW 77.85.050 responsible for fulfilling the requirements and exercising powers under this chapter.

(2) A management board consisting of fifteen voting members is created within the lower Columbia evolutionarily significant units. The members shall consist of one county commissioner or designee from each of the five participating counties selected by each county legislative authority; one member representing the cities contained within the lower Columbia evolutionarily significant units as a voting member selected by the cities in the lower Columbia evolutionarily significant units; a representative of the Cowlitz Tribe appointed by the tribe; one state legislator elected from one of the legislative districts contained within the lower Columbia evolutionarily significant units selected by that group of state legislators representing the area; five representatives to include at least one member who represents private property interests appointed by the five county commissioners or designees; one hydro utility representative nominated by hydro utilities and appointed by the five county commissioners or designees; and one representative nominated from the environmental community who resides in the lower Columbia evolutionarily significant units appointed by the five county commissioners or designees. The board shall appoint and consult a technical advisory committee, which shall include four representatives of state agencies one each appointed by the directors of the departments of ecology, fish and wildlife, and transportation, and the commissioner of public lands. The board may also appoint additional persons to the technical advisory committee as needed. The chair of the board shall be selected from among the members of the management board by the five county commissioners or designees and the legislator on the board. In making appointments under this subsection, the county commissioners shall consider recommendations of interested parties. Vacancies shall be filled in the same manner as the original appointments were selected. No action may be brought or maintained against any management board member, the management board, or any of its agents, officers, or employees for any

noncontractual acts or omissions in carrying out the purposes of this section.

(3)(a) The management board shall participate in the development of a habitat recovery plan to implement its responsibilities under (b) of this subsection. The management board shall consider local watershed efforts and activities as well as habitat conservation plans in the development and implementation of the recovery plan. Any of the participating counties may continue its own efforts for restoring steelhead habitat. Nothing in this section limits the authority of units of local government to enter into interlocal agreements under chapter 39.34 RCW or any other provision of law.

(b) The management board is responsible for the development of a lower Columbia salmon and steelhead habitat recovery plan and for coordinating and monitoring the implementation of the plan. The management board will submit all future plans and amendments to plans to the governor's salmon recovery office for the incorporation of hatchery, harvest, and hydropower components of the statewide salmon recovery strategy for all submissions to the national marine fisheries service. In developing and implementing the habitat recovery plan, the management board will work with appropriate federal and state agencies, tribal governments, local governments, and the public to make sure hatchery, harvest, and hydropower components receive consideration in context with the habitat component. The management board may work in cooperation with the state and the national marine fisheries service to modify the plan, or to address habitat for other aquatic species that may be subsequently listed under the federal endangered species act. The management board may not exercise authority over land or water within the individual counties or otherwise preempt the authority of any units of local government.

(c) The management board shall prioritize as appropriate and approve projects and programs related to the recovery of lower Columbia river salmon and steelhead runs, including the funding of those projects and programs, and coordinate local government efforts as prescribed in the recovery plan. The management board shall establish criteria for funding projects and programs based upon their likely value in salmon and steelhead recovery. The management board may consider local economic impact among the criteria, but jurisdictional boundaries and factors related to jurisdictional population may not be considered as part of the criteria.

(d) The management board shall assess the factors for decline along each tributary basin in the lower Columbia. The management board is encouraged to take a stream-by-stream approach in conducting the assessment which utilizes state and local expertise, including volunteer groups, interest groups, and affected units of local government.

(4) The management board has the authority to hire and fire staff, including an executive director, enter into contracts, accept grants and other moneys, disburse funds, make recommendations to cities and counties about potential code changes and the development of programs and incentives upon request, pay all necessary expenses, and may choose a fiduciary agent. The management board shall report on its progress on a biennial basis to the legislative bodies of the five participating counties and the state natural resource-related agencies. The management board shall prepare a final report at the conclusion of the program describing its efforts and successes in developing and implementing the lower Columbia salmon and steelhead recovery plan. The final report shall be transmitted to the appropriate committees of the legislature, the legislative bodies of the participating counties, and the state natural resource-related agencies.

(5) For purposes of this section, "evolutionarily significant unit" means the habitat area identified for an evolutionarily significant unit of an aquatic species listed or proposed for listing as a threatened or endangered species under the federal endangered species act (16 U.S.C. Sec. 1531 et seq.). [2009 c 199 § 1; 2005 c 308 § 1; 2001 c 135 § 1; 2000 c 107 § 121; 1998 c 60 § 2. Formerly RCW 75.56.050.]

Effective date—2001 c 135: "This act takes effect August 1, 2001." [2001 c 135 § 3.]

Finding—Intent—1998 c 60: "The legislature recognizes the need to address listings that are made under the federal endangered species act (16 U.S.C. Sec. 1531 et seq.) in a way that will make the most efficient use of existing efforts. The legislature finds that the principle of adaptive management requires that different models should be tried so that the lessons learned from these models can be put to use throughout the state. It is the intent of the legislature to create a program for southwestern Washington to address the recent steelhead listings and which takes full advantage of all state and local efforts at habitat restoration in that area to date." [2001 c 135 § 2; 1998 c 60 § 1.]

Effective date—1998 c 60: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 19, 1998]." [1998 c 60 § 3.]

77.85.230 Intertidal salmon enhancement plan—Elements—Initial and final plan. (1) In consultation with the appropriate task force formed under RCW 77.85.220, the conservation commission may contract with universities, private consultants, nonprofit groups, or other entities to assist it in developing a plan incorporating the following elements:

(a) An inventory of existing tide gates located on streams in the county. The inventory shall include location, age, type, and maintenance history of the tide gates and other factors as determined by the appropriate task force in consultation with the county and diking and drainage districts;

(b) An assessment of the role of tide gates located on streams in the county; the role of intertidal fish habitat for various life stages of salmon; the quantity and characterization of intertidal fish habitat currently accessible to fish; the quantity and characterization of the present intertidal fish habitat created at the time the dikes and outlets were constructed; the quantity of potential intertidal fish habitat on public lands and alternatives to enhance this habitat; the effects of saltwater intrusion on agricultural land, including the effects of backfeeding of saltwater through the underground drainage system; the role of tide gates in drainage systems, including relieving excess water from saturated soil and providing reservoir functions between tides; the effect of saturated soils on production of crops; the characteristics of properly functioning intertidal fish habitat; a map of agricultural lands designated by the county as having long-term commercial significance and the effect of that designation; and the economic impacts to existing land uses for various alternatives for tide gate alteration; and

(c) A long-term plan for intertidal salmon habitat enhancement to meet the goals of salmon recovery and protection of agricultural lands. The proposal shall consider all

other means to achieve salmon recovery without converting farmland. The proposal shall include methods to increase fish passage and otherwise enhance intertidal habitat on public lands pursuant to subsection (2) of this section, voluntary methods to increase fish passage on private lands, a priority list of intertidal salmon enhancement projects, and recommendations for funding of high priority projects. The task force also may propose pilot projects that will be designed to test and measure the success of various proposed strategies.

(2) In conjunction with other public landowners and the appropriate task force formed under RCW 77.85.220, the department shall develop an initial salmon intertidal habitat enhancement plan for public lands in the county. The initial plan shall include a list of public properties in the intertidal zone that could be enhanced for salmon, a description of how those properties could be altered to support salmon, a description of costs and sources of funds to enhance the property, and a strategy and schedule for prioritizing the enhancement of public lands for intertidal salmon habitat. This initial plan shall be submitted to the appropriate task force at least six months before the deadline established in subsection (3) of this section.

(3) The final intertidal salmon enhancement plan shall be completed within two years from the date the task force is formed under RCW 77.85.220 and funding has been secured. A final plan shall be submitted by the appropriate task force to the lead entity for the geographic area established under this chapter. [2009 c 333 § 24; 2003 c 391 § 5.]

Initiation of process—2003 c 391 §§ 4 and 5: See note following RCW 77.85.220.

Severability—Effective date—2003 c 391: See notes following RCW 77.57.030.

77.85.250 Forum on monitoring salmon recovery and watershed health—Creation—Duties—Report to the governor and legislature—Adoption of general high-level indicators for salmon recovery and watershed health. *(Expires June 30, 2011.)* (1) The forum on monitoring salmon recovery and watershed health is created to implement *the Washington Comprehensive Monitoring Strategy and Action Plan for Watershed Health and Salmon Recovery*. For administrative purposes, the forum is located within the recreation and conservation office. The governor shall appoint a person with experience and expertise in natural resources and environmental quality monitoring to chair the forum. The chair shall serve four-year terms and may serve successive terms. The forum shall include representatives of the following state agencies and regional entities that have responsibilities related to monitoring of salmon recovery and watershed health:

(a) Department of ecology;
(b) Salmon recovery funding board;
(c) Governor's salmon recovery office;
(d) Department of fish and wildlife;
(e) Department of natural resources;
(f) Puget Sound partnership;
(g) Conservation commission;
(h) Department of agriculture;
(i) Department of transportation; and
(j) Each of the regional salmon recovery organizations.

(2) The forum on monitoring salmon recovery and watershed health shall provide a multiagency venue for coordinating technical and policy issues and actions related to monitoring salmon recovery and watershed health.

(3) The forum on monitoring salmon recovery and watershed health shall recommend a set of high-level indicators for use in the consolidated report on salmon recovery and watershed health required by RCW 77.85.020 to convey results and progress on salmon recovery and watershed health in ways that are easily understood by the general public.

(4) The forum on monitoring salmon recovery and watershed health shall invite the participation of federal, tribal, regional, and local agencies and entities that carry out salmon recovery and watershed health monitoring, and work toward coordination and standardization of measures used.

(5) The forum on monitoring salmon recovery and watershed health shall periodically report to the governor and the appropriate standing committees of the senate and house of representatives on the forum's activities and recommendations for improving monitoring programs by state agencies. This information must be included within the consolidated report on salmon recovery and watershed health required by RCW 77.85.020.

(6) The forum on monitoring salmon recovery and watershed health shall review pilot monitoring programs including those that integrate (a) data collection, management, and access; and (b) information regarding habitat projects and project management.

(7) The forum on monitoring salmon recovery and watershed health shall review and make recommendations to the office of financial management and the appropriate legislative committees on agency budget requests related to monitoring salmon recovery and watershed health. These recommendations must be made no later than September 15th of each year. The goal of this review is to prioritize and integrate budget requests across agencies.

(8)(a) The forum on monitoring salmon recovery and watershed health shall adopt general high-level indicators for salmon recovery and watershed health in Washington by December 1, 2009. By July 1, 2010, the forum shall also adopt the protocols for monitoring these high-level indicators that will enable state-conducted or state-funded monitoring efforts to be capable of reporting results that will ensure reporting consistency and agency compliance under the consolidated reporting requirement of RCW 77.85.020. The forum on monitoring salmon recovery and watershed health shall indicate how the general high-level indicators are consistent with, and complement, the more detailed regional and local metrics used to measure watershed health and salmon recovery.

(b) High-level indicators shall inform a nontechnical summary of key metrics that indicate the state of salmon recovery and provide an index of watershed health in Washington.

(9) This section expires June 30, 2011. [2009 c 345 § 5; 2007 c 444 § 8.]

Finding—Intent—2009 c 345: See notes following RCW 77.85.030.

Chapter 77.95 RCW
SALMON ENHANCEMENT PROGRAM

Sections

77.95.090 Regional fisheries enhancement group account—Revenue sources, uses, and limitations.
77.95.200 Remote site incubator program—Reports to the fish and wildlife commission.
77.95.310 Report identifying total salmon and steelhead harvest.
77.95.320 Program utilizing department-partnership agreements to operate and manage certain hatcheries—Selection of partners—Partnership agreements.
77.95.330 Powers and authorities conferred by chapter to be construed as in addition and supplemental.

77.95.090 Regional fisheries enhancement group account—Revenue sources, uses, and limitations. The dedicated regional fisheries enhancement group account is created in the custody of the state treasurer. Only the commission or the commission's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures.

A portion of each recreational fishing license fee shall be used as provided in RCW 77.32.440. A surcharge of one hundred dollars shall be collected on each commercial salmon fishery license, each salmon delivery license, and each salmon charter license sold in the state. All receipts shall be placed in the regional fisheries enhancement group account and shall be used exclusively for regional fisheries enhancement group projects for the purposes of RCW 77.95.110. Except as provided in RCW 77.95.320, funds from the regional fisheries enhancement group account shall not serve as replacement funding for department operated salmon projects that exist on January 1, 1991.

All revenue from the department's sale of salmon carcasses and eggs that return to group facilities shall be deposited in the regional fisheries enhancement group account for use by the regional fisheries enhancement group that produced the surplus. The commission shall adopt rules to implement this section pursuant to chapter 34.05 RCW. [2009 c 340 § 4; 2000 c 107 § 106. Prior: 1998 c 245 § 155; 1998 c 191 § 27; 1995 1st sp.s. c 2 § 39 (Referendum Bill No. 45, approved November 7, 1995); prior: 1993 sp.s. c 17 § 11; 1993 c 340 § 53; 1990 c 58 § 3. Formerly RCW 75.50.100.]

Findings—2009 c 340: See note following RCW 77.95.320.

Effective date—1998 c 191: See note following RCW 77.32.400.

Referral to electorate—1995 1st sp.s. c 2: See note following RCW 77.04.013.

Effective date—1995 1st sp.s. c 2: See note following RCW 43.17.020.

Finding—Contingent effective date—Severability—1993 sp.s. c 17: See notes following RCW 77.32.520.

Finding, intent—Captions not law—Effective date—Severability—1993 c 340: See notes following RCW 77.65.010.

Effective date—1990 c 58 § 3: "Section 3 of this act shall take effect January 1, 1991." [1990 c 58 § 6.]

Findings—1990 c 58: See note following RCW 77.95.080.

77.95.200 Remote site incubator program—Reports to the fish and wildlife commission. (1) The department shall develop and implement a program utilizing remote site incubators in Washington state. The program shall identify sites in tributaries that are suitable for reestablishing self-sustaining, locally adapted populations of coho, chum, or chinook salmon. The initial selection of sites shall be updated annually.

(2) The department may only approve a remote site incubator project if the department deems it is consistent with the conservation of wild salmon and trout. The department shall only utilize appropriate salmonid eggs in remote site incubators, and may acquire eggs by gift or purchase.

(3) The department shall depend chiefly upon volunteer efforts to implement the remote site incubator program through volunteer cooperative projects and the regional fisheries enhancement groups. The department may prioritize remote site incubator projects within regional enhancement areas.

(4) The department may purchase remote site incubators and may use agency employees to construct remote site incubators.

(5) The department shall investigate the use of the remote site incubator technology for the production of warm water fish.

(6) Annual reports on the progress of the program shall be provided to the fish and wildlife commission. [2009 c 333 § 29; 1998 c 251 § 2. Formerly RCW 75.50.190.]

Finding—1998 c 251: "The legislature finds that trout and salmon populations are depleted in many state waters. Restoration of these populations to a healthy status requires improved protection of these species and their habitats. However, in some instances restoration of self-sustaining populations also requires the reintroduction of the fish into their native habitat.

Remote site incubators have been shown to be a cost-effective means of bypassing the early period of high mortality experienced by salmonid eggs that are naturally spawned in streams. In addition, remote site incubators provide an efficient method for reintroduction of fish into areas that are not seeded by natural spawning. The technology for remote site incubators is well developed, and their application is easily accomplished in a wide variety of habitat by persons with a moderate level of training.

It is a goal of the remote site incubator program to assist the reestablishment of wild salmon and trout populations that are self-sustaining through natural spawning. In other cases, where the habitat has been permanently damaged and natural populations cannot sustain themselves, the remote site incubator program may become a cost-effective long-term solution for supplementation of fish populations." [1998 c 251 § 1.]

77.95.310 Report identifying total salmon and steelhead harvest. (1) The department shall maintain a report identifying total salmon and steelhead harvest. This report shall include the final commercial harvests and recreational harvests. At a minimum, the report shall clearly identify:

(a) The total treaty tribal and nontribal harvests by species and by management unit;

(b) Where and why the nontribal harvest does not meet the full allocation allowed under *United States v. Washington*, 384 F. Supp. 312 (1974) (Boldt I) including a summary of the key policies within the management plan that result in a less than full nontribal allocation; and

(c) The location and quantity of salmon and steelhead harvested under the wastage provisions of *United States v. Washington*, 384 F. Supp. 312 (1974).

(2) Upon request, the department shall present the report required to be maintained under this section to the appropriate committees of the legislature. [2009 c 333 § 30; 1997 c 414 § 1. Formerly RCW 75.08.530.]

77.95.320 Program utilizing department-partnership agreements to operate and manage certain hatcheries—

Selection of partners—Partnership agreements. (1) The department shall establish a program that utilizes department-partner agreements for the resumption or continued operation and management of state-owned salmonid hatcheries now closed or scheduled for closure during the 2009-2011 biennium. To implement the program, the department shall accept and review applications to determine the appropriateness of the partner to manage and operate selected salmonid hatcheries. The department shall accelerate the application process relating to any hatchery currently in operation to avoid cessation of ongoing salmon production.

(2)(a) To select a partner, the department shall develop and apply criteria identifying the appropriateness of a potential partner. The criteria must seek to ensure that the partner has a long-range business plan, which may include the sale of hatchery surplus salmon, including eggs and carcasses, to ensure the long-range future solvency of the partnership.

(b) Partners under this section must be:

(i) Qualified under section 501(c)(3) of the internal revenue code;

(ii) A for-profit private entity; or

(iii) A federally recognized tribe.

(3) The department shall place a higher priority on applications from partners that provide for the maximum resumption or continuation of existing hatchery production in a manner consistent with the mandate contained in RCW 77.04.012 to maintain the economic well-being and stability of the fishing industry.

(4) Agreements entered into with partners under this section must be consistent with existing state laws, agency rules, collective bargaining agreements, hatchery management policy involving species listed under the federal endangered species act, or, in the case of a tribal partner, any applicable tribal hatchery management policy or recreational and commercial harvest policy. Agreements under this section must also require that partners conducting hatchery operations maintain staff with comparable qualifications to those identified in the class specifications for the department's fish hatchery personnel.

(5) All partnership agreements entered into under this section must contain a provision that requires the partner to hold harmless the department and the state for any civil liability arising from the partner's participation in the agreement or activities at the subject hatchery or hatcheries.

(6) All partnership agreements entered into under this section must identify any maintenance or improvements to be made to the hatchery facility, and the source of funding for such maintenance or improvements. If funding for the maintenance or improvements is to come from state funds or revenue sources previously received by the department, the work must be performed either by employees in the classified service or in compliance with the contracting procedures set forth in RCW 41.06.142. [2009 c 340 § 2.]

Findings—2009 c 340: "The legislature finds: (1) The full utilization of state salmonid hatcheries is vital to the recreational and commercial fisheries and related economic development and employment; and (2) effective measures are necessary to maintain all hatchery operations that are consistent with conservation of wild salmon populations and support sustainable fisheries." [2009 c 340 § 1.]

77.95.330 Powers and authorities conferred by chapter to be construed as in addition and supplemental. The powers and authority conferred by this chapter must be construed as in addition and supplemental to powers or authority conferred by any other law and nothing contained in this chapter may be construed as limiting any other powers or authority of the department. [2009 c 340 § 3.]

Findings—2009 c 340: See note following RCW 77.95.320.

Chapter 77.120 RCW
BALLAST WATER MANAGEMENT

Sections

77.120.030 Authorized ballast water discharge—Adoption of standards by rule.
77.120.110 Ballast water management account.
77.120.120 Special operating authorization—Rules.

77.120.030 Authorized ballast water discharge—Adoption of standards by rule. (1) The owner or operator in charge of any vessel covered by this chapter is required to ensure that the vessel under their ownership or control does not discharge ballast water into the waters of the state except as authorized by this section.

(2) Discharge of ballast water into waters of the state is authorized only if there has been an open sea exchange, or if the vessel has treated its ballast water, to meet standards set by the department consistent with applicable state and federal laws.

(3) The department, in consultation with a collaborative forum, shall adopt by rule standards for the discharge of ballast water into the waters of the state and their implementation timelines. The standards are intended to ensure that the discharge of ballast water poses minimal risk of introducing nonindigenous species. In developing these standards, the department shall consider the extent to which the requirement is technologically and practically feasible. Where practical and appropriate, the standards must be compatible with standards set by the United States coast guard, the federal clean water act (33 U.S.C. Sec. 1251-1387), or the international maritime organization.

(4) The master, operator, or person in charge of a vessel is not required to conduct an open sea exchange or treatment of ballast water if the master, operator, or person in charge of a vessel determines that the operation would threaten the safety of the vessel, its crew, or its passengers, because of adverse weather, vessel design limitations, equipment failure, or any other extraordinary conditions. A master, operator, or person in charge of a vessel who relies on this exemption must file documentation defined by the department, subject to: (a) Payment of a fee not to exceed five thousand dollars; (b) discharging only the minimal amount of ballast water operationally necessary; (c) ensuring that ballast water records accurately reflect any reasons for not complying with the mandatory requirements; and (d) any other requirements identified by the department by rule as provided in subsections (3) and (6) of this section.

(5) For treatment technologies requiring shipyard modification, the department may enter into a compliance plan with the vessel owner. The compliance plan must include a timeline consistent with drydock and shipyard schedules for

completion of the modification. The department shall adopt rules for compliance plans under this subsection.

(6) For an exemption claimed in subsection (4) of this section, the department shall adopt rules for defining exemption conditions, requirements, compliance plans, or alternative ballast water management strategies to meet the intent of this section.

(7) The department shall make every effort to align ballast water standards with adopted international and federal standards while ensuring that the goals of this chapter are met.

(8) The requirements of this section do not apply to a vessel discharging ballast water or sediments that originated solely within the waters of Washington, the Columbia river system, or the internal waters of British Columbia south of latitude fifty degrees north, including the waters of the Straits of Georgia and Juan de Fuca.

(9) Open sea exchange is an exchange that occurs fifty or more nautical miles offshore. If the United States coast guard requires a vessel to conduct an exchange further offshore, then that distance is the required distance for purposes of compliance with this chapter. [2009 c 333 § 26; 2007 c 350 § 10; 2004 c 227 § 3; 2002 c 282 § 2; 2000 c 108 § 4.]

77.120.110 Ballast water management account. (1) The ballast water management account is created in the state treasury. All receipts from legislative appropriations, gifts, grants, donations, penalties, and fees received under this chapter must be deposited into the account.

(2) Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only to carry out the purposes of this chapter or support the goals of this chapter through research and monitoring except:

(a) Expenditures may not be used for the salaries of permanent department employees; and

(b) Penalties deposited into the account may be used only to support basic and applied research and carry out education and outreach related to the state's ballast water management. [2009 c 333 § 27; 2007 c 350 § 14.]

77.120.120 Special operating authorization—Rules. The department may issue a special operating authorization for passenger vessels conducting or assisting in research and testing activities to determine the presence of invasive species in ballast water collected in the waters of southeast Alaska north of latitude fifty-four degrees thirty minutes north to sixty-one degrees ten minutes north, extending to longitude one hundred forty-nine degrees thirty minutes west. The department may adopt rules for defining special operating authorization conditions, requirements, limitations, and fees as necessary to implement this section, consistent with the intent of this chapter. [2009 c 333 § 28; 2007 c 350 § 15.]

Chapter 77.130 RCW
DISPOSITION OF UNCLAIMED PROPERTY

Sections

77.130.010 Unclaimed personal property—Disposition—Firearms.
77.130.020 Notice of sale.
77.130.030 Use of money from sales under this chapter.
77.130.040 Property owner entitled to receive money.
77.130.050 Application of chapters 63.24 and 63.29 RCW.
77.130.060 Donation of unclaimed personal property.

77.130.010 Unclaimed personal property—Disposition—Firearms. Whenever any personal property comes into the possession of the officers of the department in connection with the official performance of their duties and the personal property remains unclaimed or not taken away for a period of sixty days from the date of written notice to the owner thereof, if known, which notice shall inform the owner of the disposition that may be made of the property under this section and the time that the owner has to claim the property and in all other cases for a period of sixty days from the time the property came into the possession of the department, unless the property has been held as evidence in any court, then, in that event, after sixty days from date when the case has been finally disposed of and the property released as evidence by order of the court, the department may:

(1) At any time thereafter sell the personal property at public auction to the highest and best bidder for cash in the manner hereinafter provided;

(2) Retain the property for the use of the department subject to giving notice in the manner prescribed in RCW 63.35.030 and the right of the owner, or the owner's legal representative, to reclaim the property within one year after receipt of notice, without compensation for ordinary wear and tear if, in the opinion of the director, the property consists of firearms or other items specifically usable in law enforcement work. At the end of each calendar year during which there has been such a retention, the department shall provide the office of financial management and retain for public inspection a list of such retained items and an estimation of each item's replacement value;

(3) Destroy an item of personal property at the discretion of the director if the director determines that the following circumstances have occurred:

(a) The property has no substantial commercial value or the probable cost of sale exceeds the value of the property;

(b) The item has been unclaimed by any person after notice procedures have been met, as prescribed in this section; and

(c) The director has determined that the item is illegal to possess or sell or unsafe and unable to be made safe for use by any member of the general public;

(4) If the item is not unsafe or illegal to possess or sell, such item, after satisfying the notice requirements as prescribed in this section may be offered by the director to bona fide dealers, in trade for law enforcement equipment, which equipment must be treated as retained property for the purpose of annual listing requirements of subsection (2) of this section; or

(5) At the end of one year, any unclaimed firearm must be disposed of pursuant to RCW 9.41.098(2). Any other item that is not unsafe or illegal to possess or sell, but has been, or may be used, in the judgment of the director, in a manner that is illegal, may be destroyed. [2009 c 333 § 44.]

77.130.020 Notice of sale. Before the personal property shall be sold, a notice of such a sale fixing the time and place thereof which shall be at a suitable place, which will be noted

in the advertisement for sale, and containing a description of the property to be sold must be published at least once in a newspaper of general circulation in the county in which the property is to be sold at least ten days prior to the date fixed for the auction. The notice must be signed by the director. If the owner fails to reclaim the property prior to the time fixed for the sale in such a notice, the director shall conduct the sale and sell the property described in the notice at public auction to the highest and best bidder for cash, and upon payment of the amount of the bid shall deliver the property to the bidder. [2009 c 333 § 45.]

77.130.030 Use of money from sales under this chapter. The moneys arising from sales under the provisions of this chapter must be first applied to the payment of the costs and expenses of the sale and then to the payment of lawful charges and expenses for the keep of the personal property and the balance, if any, must be forwarded to the state treasurer to be deposited into the fish and wildlife enforcement reward account under RCW 77.15.425. [2009 c 333 § 46.]

77.130.040 Property owner entitled to receive money. If the owner of the personal property so sold, or the owner's legal representative, shall, at any time within three years after the money has been deposited in the fish and wildlife enforcement reward account, furnish satisfactory evidence to the state treasurer of the ownership of the personal property, the owner or the owner's legal representative is entitled to receive from the fish and wildlife enforcement reward account the amount so deposited, with interest. [2009 c 333 § 47.]

77.130.050 Application of chapters 63.24 and 63.29 RCW. (1) Chapter 63.24 RCW, unclaimed property in hands of bailee, does not apply to personal property in the possession of the department.

(2) The uniform unclaimed property act, chapter 63.29 RCW, does not apply to personal property in the possession of the department. [2009 c 333 § 48.]

77.130.060 Donation of unclaimed personal property. In addition to any other method of disposition of unclaimed property provided under this chapter, the department may donate unclaimed personal property to nonprofit charitable organizations. A nonprofit charitable organization receiving personal property donated under this section must use the property, or its proceeds, to benefit needy persons. The charitable organization must qualify for tax-exempt status under 26 U.S.C. Sec. 501(c)(3) of the federal internal revenue code. [2009 c 333 § 49.]

Title 79

PUBLIC LANDS

Chapters

79.02 Public lands management—General.
79.13 Land leases.
79.15 Sale of valuable materials.
79.17 Land transfers.
79.22 Acquisition, management, and disposition of state forest lands.
79.64 Funds for managing and administering lands.
79.105 Aquatic lands—General.
79.140 Aquatic lands—Valuable materials.

Chapter 79.02 RCW
PUBLIC LANDS MANAGEMENT—GENERAL

Sections

79.02.300 Trespass, waste, damages—Prosecutions.
79.02.310 Trespasser guilty of theft, when.
79.02.320 Removal of timber—Treble damages.
79.02.340 Repealed.
79.02.350 Repealed.

79.02.300 Trespass, waste, damages—Prosecutions. (1) Every person who, without authorization, uses or occupies public lands, removes any valuable material as defined in RCW 79.02.010 from public lands, or causes waste or damage to public lands, or injures publicly owned personal property or publicly owned improvements to real property on public lands, is liable to the state for treble the amount of the damages. However, liability shall be for single damages if the department determines, or the person proves upon trial, that the person, at time of the unauthorized act or acts, did not know, or have reason to know, that he or she lacked authorization. Damages recoverable under this section include, but are not limited to, the market value of the use, occupancy, or things removed, had the use, occupancy, or removal been authorized; and any damages caused by injury to the land, publicly owned personal property or publicly ownedimprovement, including the costs of restoration. In addition, the person is liable for reimbursing the state for its reasonable costs including, but not limited to, its administrative costs, survey costs to the extent they are not included in damages awarded for restoration costs, and its reasonable attorneys' fees and other legal costs.

(2) This section does not apply in any case where liability for damages is provided under RCW 4.24.630, 64.12.030, or 79.02.320.

(3) The department is authorized and directed to investigate all trespasses and wastes upon, and damages to, public lands of the state, and to cause prosecutions for, and/or actions for the recovery of the same, to be commenced as provided by law. [2009 c 349 § 1; 2004 c 199 § 207; 2003 c 334 § 435; 1994 c 280 § 2; 1993 c 266 § 1; 1927 c 255 § 200; RRS § 7797-200. Prior: 1897 c 89 § 64; 1895 c 178 § 99. Formerly RCW 79.01.760, 79.40.040.]

Part headings not law—2004 c 199: See note following RCW 79.02.010.

Intent—2003 c 334: See note following RCW 79.02.010.

Waste and trespass: Chapter 64.12 RCW.

79.02.310 Trespasser guilty of theft, when. Every person who willfully commits any trespass upon any public lands of the state and cuts down, destroys, or injures any timber, or any tree, including a Christmas tree as defined in *RCW 76.48.020, standing or growing thereon, or takes, or removes, or causes to be taken, or removed, therefrom any wood or timber lying thereon, or maliciously injures or severs anything attached thereto, or the produce thereof, or digs,

quarries, mines, takes or removes therefrom any earth, soil, stone, mineral, clay, sand, gravel, or any valuable materials, is guilty of theft under chapter 9A.56 RCW. [2009 c 349 § 2; 2003 c 53 § 379; 1927 c 255 § 197; RRS § 7797-197. Prior: 1889-90 pp 124-125 §§ 1, 4. Formerly RCW 79.01.748, 79.40.010.]

***Reviser's note:** RCW 76.48.020 was recodified as RCW 76.48.021 pursuant to 2009 c 245 § 29.

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

79.02.320 Removal of timber—Treble damages. Every person who shall cut or remove, or cause to be cut or removed, any timber growing or being upon any public lands of the state, including a Christmas tree as defined in *RCW 76.48.020, or who shall manufacture the same into logs, bolts, shingles, lumber or other articles of use or commerce, unless expressly authorized so to do by a bill of sale from the state, or by a lease or contract from the state under which he or she holds possession of such lands, or by provisions of law under which the bill of sale, lease or contract was issued, shall be liable to the state for treble the value of the timber or other articles cut, removed, or manufactured, to be recovered in a civil action, and shall forfeit to the state all interest in any article into which the timber is manufactured. [2009 c 349 § 3; 1927 c 255 § 199; RRS § 7797-199. Prior: 1897 c 89 § 66; 1895 c 178 § 101. Formerly RCW 79.01.756, 79.40.030.]

***Reviser's note:** RCW 76.48.020 was recodified as RCW 76.48.021 pursuant to 2009 c 245 § 29.

Firewood on state lands: Chapter 79.15 RCW.

Injunction to prevent waste on public land: RCW 64.12.050.

Injury to or removing trees, etc.—Damages: RCW 64.12.030.

Penalty for destroying native flora: RCW 47.40.080.

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

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

Chapter 79.13 RCW
LAND LEASES

Sections

79.13.100 Battery charging, battery exchange, and rapid charging stations.

79.13.100 Battery charging, battery exchange, and rapid charging stations. (1) The state and any local government, including any housing authority, is authorized to lease land owned by such an entity to any person for purposes of installing, maintaining, and operating a battery charging station, a battery exchange station, or a rapid charging station, for a term not in excess of fifty years, for rent of not less than one dollar per year, and with such other terms as the public entity's governing body determines in its sole discretion.

(2) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Battery charging station" means an electrical component assembly or cluster of component assemblies designed specifically to charge batteries within electric vehicles, which meet or exceed any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

(b) "Battery exchange station" means a fully automated facility that will enable an electric vehicle with a swappable battery to enter a drive lane and exchange the depleted battery with a fully charged battery through a fully automated process, which meets or exceeds any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

(c) "Electric vehicle infrastructure" means structures, machinery, and equipment necessary and integral to support an electric vehicle, including battery charging stations, rapid charging stations, and battery exchange stations.

(d) "Rapid charging station" means an industrial grade electrical outlet that allows for faster recharging of electric vehicle batteries through higher power levels, which meets or exceeds any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540. [2009 c 459 § 6.]

Finding—Purpose—2009 c 459: See note following RCW 47.80.090.

Regional transportation planning organizations—Electric vehicle infrastructure: RCW 47.80.090.

Chapter 79.15 RCW
SALE OF VALUABLE MATERIALS

Sections

79.15.060 Date of sale limited by time of appraisal—Transfer of authority. *(Expires January 1, 2014.)*
79.15.510 Contract harvesting—Program established. *(Expires January 1, 2014.)*
79.15.520 Contract harvesting revolving account. *(Expires January 1, 2014.)*
79.15.550 Mitigation against the potential for contract default—Report to the legislature. *(Expires January 1, 2014.)*

79.15.060 Date of sale limited by time of appraisal—Transfer of authority. ***(Expires January 1, 2014.)*** (1) For the sale of valuable materials under this chapter, if the board is required by law to appraise the sale, the board must establish a minimum appraisal value that is valid for a period of one hundred eighty days, or a longer period as may be established by resolution. The board may reestablish the minimum appraisal value at any time. For any valuable materials sales that the board is required by law to appraise, the board may by resolution transfer this authority to the department.

(2) Where the board has set a minimum appraisal value for a valuable materials sale, the department may set the final appraisal value of valuable materials for auction, which must be based on current market prices. The department may also appraise any valuable materials sale not required by law to be approved by the board. [2009 c 418 § 4; 2003 c 334 § 329.]

Findings—Intent—Expiration date—2009 c 418: See notes following RCW 79.15.510.

Intent—2003 c 334: See note following RCW 79.02.010.

79.15.510 Contract harvesting—Program established. ***(Expires January 1, 2014.)*** (1) The department may establish a contract harvesting program for directly contracting for the removal of timber and other valuable materials

from state lands and for conducting silvicultural treatments consistent with RCW 79.15.540.

(2) The contract requirements must be compatible with the office of financial management's guide to public service contracts.

(3) The department may not use contract harvesting for more than twenty percent of the total annual volume of timber offered for sale. However, volume removed primarily to address an identified forest health issue under RCW 79.15.540 may not be included in calculating the ten [twenty] percent annual limit of contract harvesting sales. [2009 c 418 § 2; 2004 c 218 § 6; 2003 c 313 § 3.]

Findings—Intent—2009 c 418: "The legislature finds that it is in the best interest of the trust beneficiaries to capture additional revenues while providing for additional environmental protection and improving forest health on state trust lands. Further, the legislature finds that contract harvesting is one method to achieve these desired outcomes while also providing the department of natural resources with the ability to offer opportunities to merchandise high value wood. The legislature intends that the department of natural resources should have the ability to expand their contract sales in areas where other sales do not generate as much revenue or provide resource management benefits. The legislature further intends that the department of natural resources distribute the increased contract harvest authority across all trusts and markets." [2009 c 418 § 1.]

Expiration date—2009 c 418: "This act expires January 1, 2014." [2009 c 418 § 7.]

Effective date—2004 c 218: See note following RCW 76.06.140.

Findings—Severability—2003 c 313: See notes following RCW 79.15.500.

79.15.520 Contract harvesting revolving account. ***(Expires January 1, 2014.)*** (1) The contract harvesting revolving account is created in the custody of the state treasurer. All receipts from the gross proceeds of the sale of logs from a contract harvesting sale must be deposited into the account. Expenditures from the account may be used only for the payment of harvesting costs incurred on contract harvesting sales and for payment of costs incurred from silvicultural treatments necessary to improve forest health conducted under RCW 79.15.540. Only the commissioner or the commissioner's designee may authorize expenditures from the account. The board of natural resources has oversight of the account, and the commissioner must periodically report to the board of natural resources as to the status of the account, its disbursement, and receipts. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(2) When the logs from a contract harvesting sale are sold, the gross proceeds must be deposited into the contract harvesting revolving account. Moneys equal to the harvesting costs must be retained in the account and be deducted from the gross proceeds to determine the net proceeds. The net proceeds from the sale of the logs must be distributed in accordance with RCW 43.30.325(1)(b). The final receipt of gross proceeds on a contract harvesting sale must be retained in the contract harvesting revolving account until all required costs for that sale have been paid. The contract harvesting revolving account is an interest-bearing account and the interest must be credited to the account. The account balance may not exceed five million dollars at the end of each calendar year. Moneys in excess of five million dollars must be disbursed according to RCW 79.22.040, 79.22.050, and 79.64.040. If the department permanently discontinues the use of contract harvesting sales, any sums remaining in the contract harvesting revolving account must be returned to the resource management cost account and the forest development account in proportion to each account's contribution to the initial balance of the contract harvesting revolving account. [2009 c 418 § 3; 2004 c 218 § 7; 2003 c 313 § 4.]

Findings—Intent—Expiration date—2009 c 418: See notes following RCW 79.15.510.

Effective date—2004 c 218: See note following RCW 76.06.140.

Findings—Severability—2003 c 313: See notes following RCW 79.15.500.

79.15.550 Mitigation against the potential for contract default—Report to the legislature. ***(Expires January 1, 2014.)*** (1) The department is directed, to the extent possible under current law consistent with its responsibility to the trust beneficiaries, to consider requests from purchasers for timber sale extensions and to provide flexibility in timber sale contract administration to help mitigate against the potential for contract default.

(2) By December 1, 2009, the department shall report to the appropriate committees of the legislature on the status of existing contracts, contract extensions, contract defaults, and shall provide a timber market forecast for 2010 and 2011. [2009 c 418 § 5.]

Findings—Intent—Expiration date—2009 c 418: See notes following RCW 79.15.510.

Chapter 79.17 RCW
LAND TRANSFERS

Sections

79.17.010 Exchange of state lands—Purposes—Conditions.
79.17.020 Exchange of lands to consolidate and block up holdings or obtain lands having commercial recreational leasing potential—Consultation with interested parties.

79.17.010 Exchange of state lands—Purposes—Conditions. (1) The department, with the approval of the board, may exchange any state land and any timber thereon for any land of equal value in order to:

(a) Facilitate the marketing of forest products of state lands;

(b) Consolidate and block-up state lands;

(c) Acquire lands having commercial recreational leasing potential;

(d) Acquire county-owned lands;

(e) Acquire urban property which has greater income potential or which could be more efficiently managed by the department in exchange for state urban lands as defined in RCW 79.19.100; or

(f) Acquire any other lands when such exchange is determined by the board to be in the best interest of the trust for which the state land is held.

(2) Land exchanged under this section shall not be used to reduce the publicly owned forest land base.

(3) The board shall determine that each land exchange is in the best interest of the trust for which the land is held prior to authorizing the land exchange.

(4) During the biennium ending June 30, 2011, for the purposes of maintaining working farm and forest landscapes

or acquiring natural resource lands at risk of development, the department, with approval of the board of natural resources, may exchange any state land and any timber thereon for any land and proceeds of equal value, when it can be demonstrated that the trust fiduciary obligations can be better fulfilled after an exchange is completed. Proceeds may be in the form of cash or services in order to achieve the purposes established in this section. Any cash received as part of an exchange transaction shall be deposited in the resource management cost account to pay for administrative expenses incurred in carrying out an exchange transaction. These administrative expenses include road maintenance and abandonment expenses. The amount of proceeds received from the exchange partner may not exceed five percent of the total value of the exchange. The receipt of proceeds shall not change the character of the transaction from an exchange to a sale.

(5) Prior to executing an exchange under this section, and in addition to the public notice requirements set forth in RCW 79.17.050, the department shall consult with legislative members, other state and federal agencies, local governments, tribes, local stakeholders, conservation groups, and any other interested parties to identify and address cultural resource issues and the potential of the state lands proposed for exchange to be used for open space, park, school, or critical habitat purposes. [2009 c 497 § 6024; 2008 c 328 § 6012. Prior: 2003 1st sp.s. c 25 § 939; 2003 c 334 § 452; 1987 c 113 § 1; 1983 c 261 § 1; 1973 1st ex.s. c 50 § 2; 1961 c 77 § 4; 1957 c 290 § 1. Formerly RCW 79.08.180.]

Effective date—2009 c 497: See note following RCW 28B.15.210.

Part headings not law—Severability—Effective date—2008 c 328: See notes following RCW 43.155.050.

Severability—Effective date—2003 1st sp.s. c 25: See notes following RCW 19.28.351.

Intent—2003 c 334: See note following RCW 79.02.010.

Exchange to block up holdings: RCW 79.17.020, 79.17.060.

79.17.020 Exchange of lands to consolidate and block up holdings or obtain lands having commercial recreational leasing potential—Consultation with interested parties. (1) The board of county commissioners of any county and/or the mayor and city council or city commission of any city or town and/or the board shall have authority to exchange, each with the other, or with the federal forest service, the federal government or any proper agency thereof and/or with any private landowner, county land of any character, land owned by municipalities of any character, and state forest land owned by the state under the jurisdiction of the department, for real property of equal value for the purpose of consolidating and blocking up the respective land holdings of any county, municipality, the federal government, or the state of Washington or for the purpose of obtaining lands having commercial recreational leasing potential.

(2) During the biennium ending June 30, 2011, for the purposes of maintaining working farm and forest landscapes or acquiring natural resource lands at risk of development, the department, with approval of the board of natural resources, may exchange any state land and any timber thereon for any land and proceeds of equal value, when it can be demonstrated that the trust fiduciary obligations can be better fulfilled after an exchange is completed. Proceeds may be in the form of cash or services in order to achieve the purposes established in this section. Any cash received as part of an exchange transaction shall be deposited in the forest development account to pay for administrative expenses incurred in carrying out an exchange transaction. The amount of proceeds received from the exchange partner may not exceed five percent of the total value of the exchange. The receipt of proceeds shall not change the character of the transaction from an exchange to a sale.

(3) Prior to executing an exchange under this section, and in addition to the public notice requirements set forth in RCW 79.17.050, the department shall consult with legislative members, other state and federal agencies, local governments, tribes, local stakeholders, conservation groups, and any other interested parties to identify and address cultural resource issues, and the potential of the state lands proposed for exchange to be used for open space, park, school, or critical habitat purposes. [2009 c 497 § 6025; 2008 c 328 § 6013. Prior: 2003 1st sp.s. c 25 § 937; 2003 c 334 § 209; 1973 1st ex.s. c 50 § 1; 1961 c 77 § 1; 1937 c 77 § 1; RRS § 5812-3e. Formerly RCW 76.12.050.]

Effective date—2009 c 497: See note following RCW 28B.15.210.

Part headings not law—Severability—Effective date—2008 c 328: See notes following RCW 43.155.050.

Severability—Effective date—2003 1st sp.s. c 25: See notes following RCW 19.28.351.

Intent—2003 c 334: See note following RCW 79.02.010.

Chapter 79.22 RCW

ACQUISITION, MANAGEMENT, AND DISPOSITION OF STATE FOREST LANDS

Sections

79.22.060 Transfer, disposal of lands without public auction—Requirements.

79.22.060 Transfer, disposal of lands without public auction—Requirements. (1) With the approval of the board, the department may directly transfer or dispose of state forest lands without public auction, if the lands:

(a) Consist of ten contiguous acres or less;

(b) Have a value of twenty-five thousand dollars or less; or

(c) Are located in a county with a population of twenty-five thousand or less and are encumbered with timber harvest deferrals, associated with wildlife species listed under the federal endangered species act, greater than thirty years in length.

(2) Disposal under this section may only occur in the following circumstances:

(a) Transfers in lieu of condemnation;

(b) Transfers to resolve trespass and property ownership disputes; or

(c) In counties with a population of twenty-five thousand or less, transfers to public agencies.

(3) Real property to be transferred or disposed of under this section shall be transferred or disposed of only after appraisal and for at least fair market value, and only if the transaction is in the best interest of the state or affected trust. Valuable materials attached to lands transferred to public agencies under subsection (2)(c) of this section must be

appraised at the fair market value without consideration of management or regulatory encumbrances associated with wildlife species listed under the federal endangered species act.

(4) The proceeds from real property transferred or disposed of under this section shall be deposited into the park land trust revolving fund and be solely used to buy replacement land within the same county as the property transferred or disposed. In counties with a population of twenty-five thousand or less, the portion of the proceeds associated with valuable materials on the transferred land must be distributed as provided in RCW 79.64.110. [2009 c 354 § 7; 2003 c 334 § 221; 2000 c 148 § 3. Formerly RCW 76.12.125.]

Finding—Intent—2009 c 354: See note following RCW 84.33.140.

Intent—2003 c 334: See note following RCW 79.02.010.

Chapter 79.64 RCW

FUNDS FOR MANAGING AND ADMINISTERING LANDS

Sections

79.64.040 Deductions from proceeds of all transactions authorized—Limitations.
79.64.110 Revenue distribution.

79.64.040 Deductions from proceeds of all transactions authorized—Limitations. (1) The board shall determine the amount deemed necessary in order to achieve the purposes of this chapter and shall provide by rule for the deduction of this amount from the moneys received from all leases, sales, contracts, licenses, permits, easements, and rights-of-way issued by the department and affecting state lands and aquatic lands, provided that no deduction shall be made from the proceeds from agricultural college lands.

(2) Moneys received as deposits from successful bidders, advance payments, and security under RCW 79.15.100, 79.15.080, and 79.11.150 prior to December 1, 1981, which have not been subjected to deduction under this section are not subject to deduction under this section.

(3) Except as otherwise provided in subsection (5) of this section, the deductions authorized under this section shall not exceed twenty-five percent of the moneys received by the department in connection with any one transaction pertaining to state lands and aquatic lands other than second-class tide and shore lands and the beds of navigable waters, and fifty percent of the moneys received by the department pertaining to second-class tide and shore lands and the beds of navigable waters.

(4) In the event that the department sells logs using the contract harvesting process described in RCW 79.15.500 through 79.15.530, the moneys received subject to this section are the net proceeds from the contract harvesting sale.

(5) During the 2009-2011 fiscal biennium, the twenty-five percent limitation on deductions set in subsection (3) of this section may be increased up to thirty percent by the board. [2009 c 564 § 957; 2007 c 522 § 958; 2005 c 518 § 945; 2004 c 199 § 227. Prior: 2003 c 334 § 522; 2003 c 313 § 8; 2001 c 250 § 16; 1999 c 279 § 2; 1981 2nd ex.s. c 4 § 3; 1971 ex.s. c 224 § 2; 1967 ex.s. c 63 § 2; 1961 c 178 § 4.]

Effective date—2009 c 564: See note following RCW 2.68.020.

Severability—Effective date—2007 c 522: See notes following RCW 15.64.050.

Severability—Effective date—2005 c 518: See notes following RCW 28A.500.030.

Part headings not law—2004 c 199: See note following RCW 79.02.010.

Intent—2003 c 334: See note following RCW 79.02.010.

Findings—Severability—2003 c 313: See notes following RCW 79.15.500.

Effective date—1999 c 279: See note following RCW 79.64.030.

Deductions authorized relating to common school lands—Temporary discontinued deductions for common school construction fund—1983 1st ex.s. c 17: "(1) The deductions authorized in RCW 79.64.040 relating to common school lands may be increased by the board of natural resources to one hundred percent after temporary discontinued deductions result in a transfer to the common school construction fund in the amount of approximately fourteen million dollars or so much thereof as may be necessary to maintain a positive cash balance in the common school construction fund. The increased deductions shall continue until the additional amounts received from the increased rate equal the amounts of the deductions that were discontinued or transferred under subsection (2) of this section. Thereafter the deductions shall be as otherwise provided for in RCW 79.64.040.

(2) If the discontinued deductions will not result in a transfer of fourteen million dollars or so much thereof as may be necessary to maintain a positive balance in the common school construction fund in the biennium ending June 30, 1983, the state treasurer shall transfer the difference from the resource management cost account to the common school construction fund." [1983 1st ex.s. c 17 § 3.]

Severability—1981 2nd ex.s. c 4: See note following RCW 43.30.325.

79.64.110 Revenue distribution. Any moneys derived from the lease of state forest lands or from the sale of valuable materials, oils, gases, coal, minerals, or fossils from those lands, or the appraised value of these resources when transferred to a public agency under RCW 79.22.060, must be distributed as follows:

(1) State forest lands acquired through RCW 79.22.040 or by exchange for lands acquired through RCW 79.22.040:

(a) The expense incurred by the state for administration, reforestation, and protection, not to exceed twenty-five percent, which rate of percentage shall be determined by the board, must be returned to the forest development account in the state general fund.

(b) Any balance remaining must be paid to the county in which the land is located to be paid, distributed, and prorated, except as otherwise provided in this section, to the various funds in the same manner as general taxes are paid and distributed during the year of payment.

(c) Any balance remaining, paid to a county with a population of less than sixteen thousand, must first be applied to the reduction of any indebtedness existing in the current expense fund of the county during the year of payment.

(d) With regard to moneys remaining under this subsection (1), within seven working days of receipt of these moneys, the department shall certify to the state treasurer the amounts to be distributed to the counties. The state treasurer shall distribute funds to the counties four times per month, with no more than ten days between each payment date.

(2) State forest lands acquired through RCW 79.22.010 or by exchange for lands acquired through RCW 79.22.010, except as provided in RCW 79.64.120:

(a) Fifty percent shall be placed in the forest development account.

(b) Fifty percent shall be prorated and distributed to the state general fund, to be dedicated for the benefit of the public schools, and the county in which the land is located according to the relative proportions of tax levies of all taxing districts in the county. The portion to be distributed to the state general fund shall be based on the regular school levy rate under RCW 84.52.065 and the levy rate for any maintenance and operation special school levies. With regard to the portion to be distributed to the counties, the department shall certify to the state treasurer the amounts to be distributed within seven working days of receipt of the money. The state treasurer shall distribute funds to the counties four times per month, with no more than ten days between each payment date. The money distributed to the county must be paid, distributed, and prorated to the various other funds in the same manner as general taxes are paid and distributed during the year of payment.

(3) A school district may transfer amounts deposited in its debt service fund pursuant to this section into its capital projects fund as authorized in RCW 28A.320.330. [2009 c 354 § 8; 2007 c 503 § 1; 2003 c 334 § 207.]

Finding—Intent—2009 c 354: See note following RCW 84.33.140.

Intent—2003 c 334: See note following RCW 79.02.010.

Chapter 79.105 RCW
AQUATIC LANDS—GENERAL

Sections

79.105.150 Deposit, use of proceeds from sale or lease of aquatic lands or valuable materials therefrom—Aquatic lands enhancement project grant requirements—Aquatic lands enhancement account.

79.105.150 Deposit, use of proceeds from sale or lease of aquatic lands or valuable materials therefrom—Aquatic lands enhancement project grant requirements—Aquatic lands enhancement account. (1) After deduction for management costs as provided in RCW 79.64.040 and payments to towns under RCW 79.115.150(2), all moneys received by the state from the sale or lease of state-owned aquatic lands and from the sale of valuable material from state-owned aquatic lands shall be deposited in the aquatic lands enhancement account which is hereby created in the state treasury. After appropriation, these funds shall be used solely for aquatic lands enhancement projects; for the purchase, improvement, or protection of aquatic lands for public purposes; for providing and improving access to the lands; and for volunteer cooperative fish and game projects. During the 2009-11 fiscal biennium, the legislature may transfer from the aquatic lands enhancement account to the state general fund such amounts as reflect excess fund balance of the account.

(2) In providing grants for aquatic lands enhancement projects, the recreation and conservation funding board shall:

(a) Require grant recipients to incorporate the environmental benefits of the project into their grant applications;

(b) Utilize the statement of environmental benefits, consideration, except as provided in RCW 79.105.610, of whether the applicant is a Puget Sound partner, as defined in RCW 90.71.010, whether a project is referenced in the action agenda developed by the Puget Sound partnership under RCW 90.71.310, and except as otherwise provided in RCW 79.105.630, and effective one calendar year following the development and statewide availability of model evergreen community management plans and ordinances under RCW 35.105.050, whether the applicant is an entity that has been recognized, and what gradation of recognition was received, in the evergreen community recognition program created in RCW 35.105.030 in its prioritization and selection process; and

(c) Develop appropriate outcome-focused performance measures to be used both for management and performance assessment of the grants.

(3) To the extent possible, the department should coordinate its performance measure system with other natural resource-related agencies as defined in RCW 43.41.270.

(4) The department shall consult with affected interest groups in implementing this section.

(5) After January 1, 2010, any project designed to address the restoration of Puget Sound may be funded under this chapter only if the project is not in conflict with the action agenda developed by the Puget Sound partnership under RCW 90.71.310. [2009 c 564 § 959; 2008 c 299 § 28; 2007 c 341 § 32. Prior: 2005 c 518 § 946; 2005 c 155 § 121; 2004 c 276 § 914; 2002 c 371 § 923; 2001 c 227 § 7; 1999 c 309 § 919; 1997 c 149 § 913; 1995 2nd sp.s. c 18 § 923; 1994 c 219 § 12; 1993 sp.s. c 24 § 927; 1987 c 350 § 1; 1985 c 57 § 79; 1984 c 221 § 24; 1982 2nd ex.s. c 8 § 4; 1969 ex.s. c 273 § 12; 1967 ex.s. c 105 § 3; 1961 c 167 § 9. Formerly RCW 79.90.245, 79.24.580.]

Effective date—2009 c 564: See note following RCW 2.68.020.

Short title—2008 c 299: See note following RCW 35.105.010.

Severability—Effective date—2007 c 341: See RCW 90.71.906 and 90.71.907.

Severability—Effective date—2005 c 518: See notes following RCW 28A.500.030.

Severability—Effective date—2004 c 276: See notes following RCW 43.330.167.

Severability—Effective date—2002 c 371: See notes following RCW 9.46.100.

Findings—Intent—2001 c 227: See note following RCW 43.41.270.

Severability—Effective date—1999 c 309: See notes following RCW 41.06.152.

Severability—Effective date—1997 c 149: See notes following RCW 43.08.250.

Severability—Effective date—1995 2nd sp.s. c 18: See notes following RCW 19.118.110.

Finding—1994 c 219: See note following RCW 43.88.030.

Severability—Effective dates—1993 sp.s. c 24: See notes following RCW 28A.310.020.

Effective date—1987 c 350: "This act shall take effect July 1, 1989." [1987 c 350 § 3.]

Effective date—1985 c 57: See note following RCW 18.04.105.

Severability—Effective date—1984 c 221: See RCW 79.105.901 and 79.105.902.

Chapter 79.140 RCW
AQUATIC LANDS—VALUABLE MATERIALS

Sections

79.140.120 Decodified.
79.140.210 Mount St. Helens dredge spoils or materials—Written notification—Report to the legislature.

79.140.120 Decodified. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79.140.210 Mount St. Helens dredge spoils or materials—Written notification—Report to the legislature. (1)(a) The legislature finds and declares that an extraordinary volume of material washed down onto beds of navigable waters and shorelands in the Toutle river, Coweeman river, and portions of the Cowlitz river following the eruption of Mount St. Helens in 1980.

(b) The legislature further finds that the owners of private lands located near the impacted rivers were authorized to sell, transfer, or otherwise dispose of any dredge spoils removed from the river between the years of 1980 and 1995 without the necessity of any charge by the department.

(c) The legislature further finds that the dredging activities following the eruption of Mount St. Helens are no longer adequate to protect engineered structures on the affected rivers or the public health and safety of the communities located in proximity to the affected rivers. Future river dredging will be necessary as part of managing the post-eruption state of the rivers, and with the commencement of new dredging activities, the underlying conditions leading to the previous authority for private landowners to dispose of the dredged materials without the necessity of any charge by the department are replicated.

(d) The legislature further finds that just as between the years of 1980 and 1995, the dredge spoils placed upon adjacent publicly and privately owned property in the affected areas, if further disposed, will be of nominal value to the state and that it is in the best interests of the state to allow further disposal without charge.

(2)(a) All dredge spoil or materials removed from the state-owned beds and shores of the Toutle river, Coweeman river, and that portion of the Cowlitz river from two miles above the confluence of the Toutle river to its mouth deposited on adjacent public and private lands prior to January 1, 2009, as a result of dredging the affected rivers for navigation and flood control purposes may be sold, transferred, or otherwise disposed of by owners of the lands without the necessity of any charge by the department and free and clear of any interest of the department.

(b) All dredge spoil or materials removed from the state-owned beds and shores of the Toutle river, Coweeman river, and that portion of the Cowlitz river from two miles above the confluence of the Toutle river to its mouth deposited on adjacent public and private lands after January 1, 2009, but before December 31, 2017, as a result of dredging the affected rivers for navigation and flood control purposes may be sold, transferred, or otherwise disposed of by owners of the lands without the necessity of any charge by the department and free and clear of any interest of the department if the land in question was not used as a source for commercially sold materials prior to January 1, 2009. If the land in question was used as a source for commercially sold materials prior to January 1, 2009, the dredge spoils may be used without the necessity of any charge by the department. However, any sale of the materials would not be exempt from charges by the department consistent with this title.

(3)(a) Prior to selling or otherwise using any materials under this section for commercial purposes, written notification must be provided by the owners of the lands to the department outlining the type and amount of material that is planned to be sold or otherwise used.

(b) The department shall report to the appropriate committees of the legislature each biennium through the end of the 2015-2017 biennium a summary of any notifications received under (a) of this subsection. The report must include a determination of whether any revenue that would otherwise accrue to the state has been diverted by the provisions of this section and a summation of the diverted amount for the previous biennium. The initial report is due by January 2, 2012, with subsequent reports due by January 2nd of each even-numbered year. [2009 c 426 § 1.]

Title 79A

PUBLIC RECREATIONAL LANDS

Chapters

79A.05 Parks and recreation commission.
79A.15 Acquisition of habitat conservation and outdoor recreation lands.
79A.25 Recreation and conservation funding board.
79A.55 Scenic river system.
79A.75 State parks centennial.

Chapter 79A.05 RCW

PARKS AND RECREATION COMMISSION

Sections

79A.05.013 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. *(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*
79A.05.115 Cross-state trail facility. *(Contingent expiration date.)*
79A.05.120 Cross-state trail—Transfer of lands in Milwaukee Road corridor. *(Contingent expiration date.)*
79A.05.125 Cross-state trail—Rail line franchise negotiations by department of transportation. *(Contingent expiration date.)*
79A.05.130 Cross-state trail account—Land acquisition—Rules describing trail. *(Contingent expiration date.)*
79A.05.600 Declaration of principles.

79A.05.013 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. ***(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 185.]

79A.05.115 Cross-state trail facility. ***(Contingent expiration date.)*** (1) The commission shall develop and maintain a cross-state trail facility with appropriate appurtenances.

(2) This section expires July 1, 2019, unless the department of transportation enters into a franchise agreement for a rail line over any of the portions of the Milwaukee Road corridor between Ellensburg and Marengo by July 1, 2019. [2009 c 338 § 1; 2006 c 160 § 1; 1999 c 301 § 1; 1996 c 129 § 2. Formerly RCW 43.51.112.]

Effective date—2009 c 338: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect June 30, 2009." [2009 c 338 § 5.]

Effective date—1999 c 301: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 13, 1999]." [1999 c 301 § 6.]

Intent—1996 c 129: "The legislature intends to complete a cross-state trail system while maintaining long-term ownership of the Milwaukee Road corridor. In order to accomplish this, it will be beneficial to change the management and control of certain portions of the Milwaukee Road corridor currently managed and controlled by several state agencies and to provide a franchise to establish and maintain a rail line. It is the intent of the legislature that if a franchise is not agreed upon, no changes in the current management and control shall occur." [1996 c 129 § 1.]

Effective date—1996 c 129: "This act takes effect July 1, 1996." [1996 c 129 § 10.]

Severability—1996 c 129: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1996 c 129 § 12.]

79A.05.120 Cross-state trail—Transfer of lands in Milwaukee Road corridor. ***(Contingent expiration date.)*** (1) To facilitate completion of a cross-state trail under the management of the parks and recreation commission, management and control of lands known as the Milwaukee Road corridor shall be transferred between state agencies as follows on the date a franchise agreement is entered into for a rail line over portions of the Milwaukee Road corridor:

(a) Portions owned by the state between Ellensburg and the Columbia river that are managed by the parks and recreation commission are transferred to the department of transportation;

(b) Portions owned by the state between the west side of the Columbia river and Royal City Junction and between Warden and Lind that are managed by the department of natural resources are transferred to the department of transportation;

(c) Portions owned by the state between Lind and the Idaho border that are managed by the department of natural resources are transferred to the parks and recreation commission as of June 7, 2006; and

(d) Portions owned by the state between Lind and Marengo are transferred to the department of transportation.

(2) The department of natural resources may, by mutual agreement with the parks and recreation commission, transfer management authority over portions of the Milwaukee Road corridor to the state parks and recreation commission, at any time prior to the department of transportation entering into a franchise agreement.

(3) This section expires July 1, 2019, and no transfers shall occur unless the department of transportation enters into a franchise agreement for a rail line over any of the portions of the Milwaukee Road corridor between Ellensburg and Marengo by July 1, 2019. [2009 c 338 § 2; 2006 c 160 § 2; 1999 c 301 § 2; 1996 c 129 § 3. Formerly RCW 43.51.1121.]

Effective date—2009 c 338: See note following RCW 79A.05.115.

Effective date—1999 c 301: See note following RCW 79A.05.115.

Intent—Effective date—Severability—1996 c 129: See notes following RCW 79A.05.115.

79A.05.125 Cross-state trail—Rail line franchise negotiations by department of transportation. ***(Contingent expiration date.)*** (1) The department of transportation shall negotiate one or more franchises with rail carriers to establish and maintain a rail line over portions of the Milwaukee Road corridor owned by the state between Ellensburg and Marengo. The department of transportation may negotiate such a franchise with any qualified rail carrier. Criteria for negotiating the franchise and establishing the right-of-way include:

(a) Assurances that resources from the franchise will be sufficient to compensate the state for use of the property, including completion of a cross-state trail between Easton and the Idaho border;

(b) Types of payment for use of the franchise, including payment for the use of federally granted trust lands in the transportation corridor;

(c) Standards for maintenance of the line;

(d) Provisions ensuring that both the conventional and intermodal rail service needs of local shippers are met. Such accommodations may comprise agreements with the franchisee to offer or maintain adequate service or to provide service by other carriers at commercially reasonable rates;

(e) Provisions requiring the franchisee, upon reasonable request of any other rail operator, to provide rail service and interchange freight over what is commonly known as the Stampede Pass rail line from Cle Elum to Auburn at commercially reasonable rates;

(f) If any part of the franchise agreement is invalidated by actions or rulings of the federal surface transportation board or a court of competent jurisdiction, the remaining portions of the franchise agreement are not affected;

(g) Compliance with environmental standards; and

(h) Provisions for insurance and the coverage of liability.

(2) The franchise may provide for periodic review of financial arrangements under the franchise.

(3) The department of transportation, in consultation with the parks and recreation commission and the senate and house transportation committees, shall negotiate the terms of the franchise, and shall present the agreement to the parks and recreation commission for approval of as to terms and provisions affecting the cross-state trail or affecting the commission.

(4) This section expires July 1, 2019, unless the department of transportation enters into a franchise agreement for a rail line over any of the portions of the Milwaukee Road corridor between Ellensburg and Marengo by July 1, 2019. [2009 c 338 § 3; 2006 c 160 § 3; 2005 c 319 § 134; 1999 c 301 § 3; 1996 c 129 § 4. Formerly RCW 43.51.113.]

Effective date—2009 c 338: See note following RCW 79A.05.115.

Findings—Intent—Part headings—Effective dates—2005 c 319: See notes following RCW 43.17.020.

Effective date—1999 c 301: See note following RCW 79A.05.115.

Review and approval of franchise—Report to the legislature: "(1) Before entering into a final agreement to issue a franchise negotiated in accordance with RCW 43.51.113, the department of transportation shall submit the franchise to the legislative transportation committee for review and approval.

(2) If the department of transportation has not entered into a final agreement to franchise a rail line over portions of the Milwaukee Road corridor by December 1, 1998, a report of the progress and obstacles to such an agreement shall be made. The report shall be submitted by December 15, 1998, to appropriate committees of the legislature." [1996 c 129 § 6.]

Intent—Effective date—Severability—1996 c 129: See notes following RCW 79A.05.115.

79A.05.130 Cross-state trail account—Land acquisition—Rules describing trail. ***(Contingent expiration date.)*** (1) The cross-state trail account is created in the custody of the state treasurer. Eleven million five hundred thousand dollars is provided to the state parks and recreation commission to acquire, construct, and maintain a cross-state trail. This amount may consist of: (a) Legislative appropriations intended for trail development; (b) payments for the purchase of federally granted trust lands; and (c) franchise fees derived from use of the rail corridor. The legislature intends that any amounts provided from the transportation fund are to be repaid to the transportation fund from franchise fees.

(2) The department shall deposit franchise fees from use of the rail corridor according to the following priority: (a) To the department of transportation for actual costs incurred in administering the franchise; (b) to the department of natural resources as compensation for use of federally granted trust lands in the rail corridor; (c) to the transportation fund to reimburse any amounts transferred or appropriated from that fund by the legislature for trail development; (d) to the cross-state trail account, not to exceed eleven million five hundred thousand dollars, provided that this amount shall be reduced proportionate with any funds transferred or appropriated by the 1996 legislature or paid from franchise fees for the purchase of federally granted trust lands or for trail development; and (e) the remainder to the essential rail assistance account, created under RCW 47.76.250. Expenditures from the cross-state trail account may be used only for the acquisition, development, operation, and maintenance of the cross-state trail. Only the director of the state parks and recreation commission or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures.

(3) The commission may acquire land from willing sellers for the cross-state trail, but not by eminent domain.

(4) The commission shall adopt rules describing the cross-state trail.

(5) This section expires July 1, 2019, unless the department of transportation enters into a franchise agreement for a rail line over any of the portions of the Milwaukee Road corridor between Ellensburg and Marengo by July 1, 2019. [2009 c 338 § 4; 2006 c 160 § 4; 1999 c 301 § 4; 1996 c 129 § 5. Formerly RCW 43.51.114.]

Effective date—2009 c 338: See note following RCW 79A.05.115.

Effective date—1999 c 301: See note following RCW 79A.05.115.

Intent—Effective date—Severability—1996 c 129: See notes following RCW 79A.05.115.

79A.05.600 Declaration of principles. The beaches bounding the Pacific Ocean from the Straits of Juan de Fuca to Cape Disappointment at the mouth of the Columbia River constitute some of the last unspoiled seashore remaining in the United States. They provide the public with almost unlimited opportunities for recreational activities, like swimming, surfing and hiking; for outdoor sports, like hunting, fishing, clamming, and boating; for the observation of nature as it existed for hundreds of years before the arrival of Europeans; and for relaxation away from the pressures and tensions of modern life. In past years, these recreational activities have been enjoyed by countless Washington citizens, as well as by tourists from other states and countries. The number of people wishing to participate in such recreational activities grows annually. This increasing public pressure makes it necessary that the state dedicate the use of the ocean beaches to public recreation and to provide certain recreational and sanitary facilities. Nonrecreational use of the beach must be strictly limited. Even recreational uses must be regulated in order that Washington's unrivaled seashore may be saved for our children in much the same form as we know it today. [2009 c 549 § 1029; 1967 c 120 § 1. Formerly RCW 43.51.650.]

Repeal and savings—1967 c 120: "Chapter 78, Laws of 1929 (uncodified) is hereby repealed: PROVIDED, That the title of anyone who has purchased property under this act shall not be affected." [1967 c 120 § 10.]

Chapter 79A.15 RCW

ACQUISITION OF HABITAT CONSERVATION AND OUTDOOR RECREATION LANDS

Sections

79A.15.010 Definitions.
79A.15.030 Allocation and use of moneys—Grants.
79A.15.060 Habitat conservation account—Acquisition policies and priorities.
79A.15.100 Repealed.
79A.15.120 Riparian protection account—Use of funds.
79A.15.130 Farmlands preservation account—Use of funds.

79A.15.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Acquisition" means the purchase on a willing seller basis of fee or less than fee interests in real property. These interests include, but are not limited to, options, rights of first refusal, conservation easements, leases, and mineral rights.

(2) "Board" means the recreation and conservation funding board.

(3) "Critical habitat" means lands important for the protection, management, or public enjoyment of certain wildlife species or groups of species, including, but not limited to, wintering range for deer, elk, and other species, waterfowl and upland bird habitat, fish habitat, and habitat for endangered, threatened, or sensitive species.

(4) "Farmlands" means any land defined as "farm and agricultural land" in RCW 84.34.020(2).

(5) "Local agencies" means a city, county, town, federally recognized Indian tribe, special purpose district, port district, or other political subdivision of the state providing services to less than the entire state.

(6) "Natural areas" means areas that have, to a significant degree, retained their natural character and are important in preserving rare or vanishing flora, fauna, geological, natural historical, or similar features of scientific or educational value.

(7) "Nonprofit nature conservancy corporation or association" means an organization as defined in RCW 84.34.250.

(8) "Riparian habitat" means land adjacent to water bodies, as well as submerged land such as streambeds, which can provide functional habitat for salmonids and other fish and wildlife species. Riparian habitat includes, but is not limited to, shorelines and near-shore marine habitat, estuaries, lakes, wetlands, streams, and rivers.

(9) "Special needs populations" means physically restricted people or people of limited means.

(10) "State agencies" means the state parks and recreation commission, the department of natural resources, the department of general administration, and the department of fish and wildlife.

(11) "Trails" means public ways constructed for and open to pedestrians, equestrians, or bicyclists, or any combination thereof, other than a sidewalk constructed as a part of a city street or county road for exclusive use of pedestrians.

(12) "Urban wildlife habitat" means lands that provide habitat important to wildlife in proximity to a metropolitan area.

(13) "Water access" means boat or foot access to marine waters, lakes, rivers, or streams. [2009 c 341 § 1; 2007 c 241 § 26; 2005 c 303 § 1; 1990 1st ex.s. c 14 § 2. Formerly RCW 43.98A.010.]

Intent—Effective date—2007 c 241: See notes following RCW 79A.25.005.

Effective date—2005 c 303 §§ 1-14: "Sections 1 through 14 of this act take effect July 1, 2007." [2005 c 303 § 17.]

79A.15.030 Allocation and use of moneys—Grants. (1) Moneys appropriated for this chapter shall be divided as follows:

(a) Appropriations for a biennium of forty million dollars or less must be allocated equally between the habitat conservation account and the outdoor recreation account.

(b) If appropriations for a biennium total more than forty million dollars, the money must be allocated as follows: (i) Twenty million dollars to the habitat conservation account and twenty million dollars to the outdoor recreation account; (ii) any amount over forty million dollars up to fifty million dollars shall be allocated as follows: (A) Ten percent to the habitat conservation account; (B) ten percent to the outdoor recreation account; (C) forty percent to the riparian protection account; and (D) forty percent to the farmlands preservation account; and (iii) any amounts over fifty million dollars must be allocated as follows: (A) Thirty percent to the habitat conservation account; (B) thirty percent to the outdoor recreation account; (C) thirty percent to the riparian protection account; and (D) ten percent to the farmlands preservation account.

(2) Except as otherwise provided in chapter 303, Laws of 2005, moneys deposited in these accounts shall be invested as authorized for other state funds, and any earnings on them shall be credited to the respective account.

(3) All moneys deposited in the habitat conservation, outdoor recreation, riparian protection, and farmlands preservation accounts shall be allocated as provided under RCW 79A.15.040, 79A.15.050, 79A.15.120, and 79A.15.130 as grants to state or local agencies or nonprofit nature conservancy organizations or associations for acquisition, development, and renovation within the jurisdiction of those agencies, subject to legislative appropriation. The board may use or permit the use of any funds appropriated for this chapter as matching funds where federal, local, or other funds are made available for projects within the purposes of this chapter. Moneys appropriated to these accounts that are not obligated to a specific project may be used to fund projects from lists of alternate projects from the same account in biennia succeeding the biennium in which the moneys were originally appropriated.

(4) Projects receiving grants under this chapter that are developed or otherwise accessible for public recreational uses shall be available to the public.

(5) The board may make grants to an eligible project from the habitat conservation, outdoor recreation, riparian protection, and farmlands preservation accounts and any one or more of the applicable categories under such accounts described in RCW 79A.15.040, 79A.15.050, 79A.15.120, and 79A.15.130.

(6) The board may accept private donations to the habitat conservation account, the outdoor recreation account, the riparian protection account, and the farmlands preservation account for the purposes specified in this chapter.

(7) The board may apply up to three percent of the funds appropriated for this chapter for its office for the administration of the programs and purposes specified in this chapter.

(8) Habitat and recreation land and facilities acquired or developed with moneys appropriated for this chapter may not, without prior approval of the board, be converted to a use other than that for which funds were originally approved. The board shall adopt rules and procedures governing the approval of such a conversion. [2009 c 341 § 2; 2007 c 241 § 28; 2005 c 303 § 2; 2000 c 11 § 66; 1990 1st ex.s. c 14 § 4. Formerly RCW 43.98A.030.]

Intent—Effective date—2007 c 241: See notes following RCW 79A.25.005.

Effective date—2005 c 303 §§ 1-14: See note following RCW 79A.15.010.

Outdoor recreation account: Chapter 79A.25 RCW.

79A.15.060 Habitat conservation account—Acquisition policies and priorities. (1) The board may adopt rules establishing acquisition policies and priorities for distributions from the habitat conservation account.

(2) Except as provided in RCW 79A.15.030(7), moneys appropriated for this chapter may not be used by the board to fund staff positions or other overhead expenses, or by a state, regional, or local agency to fund operation or maintenance of areas acquired under this chapter.

(3) Moneys appropriated for this chapter may be used by grant recipients for costs incidental to acquisition, including, but not limited to, surveying expenses, fencing, and signing.

(4) The board may not approve a local project where the local agency share is less than the amount to be awarded from the habitat conservation account.

(5) In determining acquisition priorities with respect to the habitat conservation account, the board shall consider, at a minimum, the following criteria:

(a) For critical habitat and natural areas proposals:

(i) Community support for the project;

(ii) The project proposal's ongoing stewardship program that includes control of noxious weeds, detrimental invasive species, and that identifies the source of the funds from which the stewardship program will be funded;

(iii) Recommendations as part of a watershed plan or habitat conservation plan, or a coordinated regionwide prioritization effort, and for projects primarily intended to benefit salmon, limiting factors, or critical pathways analysis;

(iv) Immediacy of threat to the site;

(v) Uniqueness of the site;

(vi) Diversity of species using the site;

(vii) Quality of the habitat;

(viii) Long-term viability of the site;

(ix) Presence of endangered, threatened, or sensitive species;

(x) Enhancement of existing public property;

(xi) Consistency with a local land use plan, or a regional or statewide recreational or resource plan, including projects that assist in the implementation of local shoreline master plans updated according to RCW 90.58.080 or local comprehensive plans updated according to RCW 36.70A.130;

(xii) Educational and scientific value of the site;

(xiii) Integration with recovery efforts for endangered, threatened, or sensitive species;

(xiv) For critical habitat proposals by local agencies, the statewide significance of the site.

(b) For urban wildlife habitat proposals, in addition to the criteria of (a) of this subsection:

(i) Population of, and distance from, the nearest urban area;

(ii) Proximity to other wildlife habitat;

(iii) Potential for public use; and

(iv) Potential for use by special needs populations.

(6) Before November 1st of each even-numbered year, the board shall recommend to the governor a prioritized list of all state agency and local projects to be funded under RCW 79A.15.040(1) (a), (b), and (c). The governor may remove projects from the list recommended by the board and shall submit this amended list in the capital budget request to the legislature. The list shall include, but not be limited to, a description of each project and any particular match requirement, and describe for each project any anticipated restrictions upon recreational activities allowed prior to the project. [2009 c 341 § 3; 2009 c 16 § 1; 2007 c 241 § 31; 2005 c 303 § 8; 2000 c 11 § 67; 1999 c 379 § 918; 1997 c 235 § 719; 1990 1st ex.s. c 14 § 7. Formerly RCW 43.98A.060.]

Reviser's note: This section was amended by 2009 c 16 § 1 and by 2009 c 341 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Intent—Effective date—2007 c 241: See notes following RCW 79A.25.005.

Effective date—2005 c 303 §§ 1-14: See note following RCW 79A.15.010.

Effective date—1999 c 379: See note following RCW 79A.15.040.

Severability—Effective date—1997 c 235: See notes following RCW 79A.15.040.

79A.15.100 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79A.15.120 Riparian protection account—Use of funds. (1) The riparian protection account is established in the state treasury. The board must administer the account in accordance with chapter 79A.25 RCW and this chapter, and hold it separate and apart from all other money, funds, and accounts of the board.

(2) Moneys appropriated for this chapter to the riparian protection account must be distributed for the acquisition or enhancement or restoration of riparian habitat. All enhancement or restoration projects, except those qualifying under subsection (9)(a) of this section, must include the acquisition of a real property interest in order to be eligible.

(3) State and local agencies and lead entities under chapter 77.85 RCW, nonprofit nature conservancy organizations or associations, and the conservation commission may apply for acquisition and enhancement or restoration funds for riparian habitat projects under subsection (1) of this section. Other state agencies not defined in RCW 79A.15.010, such as the department of transportation and the department of corrections, may enter into interagency agreements with state agencies to apply in partnership for funds under this section.

(4) The board may adopt rules establishing acquisition policies and priorities for distributions from the riparian protection account.

(5) Except as provided in RCW 79A.15.030(7), moneys appropriated for this section may not be used by the board to fund staff positions or other overhead expenses, or by a state, regional, or local agency to fund operation or maintenance of areas acquired under this chapter.

(6) Moneys appropriated for this section may be used by grant recipients for costs incidental to restoration and acquisition, including, but not limited to, surveying expenses, fencing, and signing.

(7) The board may not approve a local project where the local agency or nonprofit nature conservancy organization or association share is less than the amount to be awarded from the riparian protection account. In-kind contributions, including contributions of a real property interest in land may be used to satisfy the local agency's or nonprofit nature conservancy organization's or association's share.

(8) State agencies receiving grants for acquisition of land under this section must pay an amount in lieu of real property taxes equal to the amount of tax that would be due if the land were taxable as open space land under chapter 84.34 RCW except taxes levied for any state purpose, plus an additional amount for control of noxious weeds equal to that which would be paid if such lands were privately owned. The county assessor and county legislative authority shall assist in determining the appropriate calculation of the amount of tax that would be due.

(9) In determining acquisition priorities with respect to the riparian protection account, the board must consider, at a minimum, the following criteria:

(a) Whether the project continues the conservation reserve enhancement program. Applications that extend the duration of leases of riparian areas that are currently enrolled in the conservation reserve enhancement program shall be

eligible. Such applications are eligible for a conservation lease extension of at least twenty-five years of duration;

(b) Whether the projects are identified or recommended in a watershed planning process under chapter 247, Laws of 1998, salmon recovery planning under chapter 77.85 RCW, or other local plans, such as habitat conservation plans, and these must be highly considered in the process;

(c) Whether there is community support for the project;

(d) Whether the proposal includes an ongoing stewardship program that includes control of noxious weeds, detrimental invasive species, and that identifies the source of the funds from which the stewardship program will be funded;

(e) Whether there is an immediate threat to the site;

(f) Whether the quality of the habitat is improved or, for projects including restoration or enhancement, the potential for restoring quality habitat including linkage of the site to other high quality habitat;

(g) Whether the project is consistent with a local land use plan, or a regional or statewide recreational or resource plan. The projects that assist in the implementation of local shoreline master plans updated according to RCW 90.58.080 or local comprehensive plans updated according to RCW 36.70A.130 must be highly considered in the process;

(h) Whether the site has educational or scientific value; and

(i) Whether the site has passive recreational values for walking trails, wildlife viewing, or the observation of natural settings.

(10) Before November 1st of each even-numbered year, the board will recommend to the governor a prioritized list of projects to be funded under this section. The governor may remove projects from the list recommended by the board and will submit this amended list in the capital budget request to the legislature. The list must include, but not be limited to, a description of each project and any particular match requirement. [2009 c 341 § 4; 2009 c 16 § 2; 2007 c 241 § 37; 2005 c 303 § 6.]

Reviser's note: This section was amended by 2009 c 16 § 2 and by 2009 c 341 § 4, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Intent—Effective date—2007 c 241: See notes following RCW 79A.25.005.

Effective date—2005 c 303 §§ 1-14: See note following RCW 79A.15.010.

79A.15.130 Farmlands preservation account—Use of funds. (1) The farmlands preservation account is established in the state treasury. The board will administer the account in accordance with chapter 79A.25 RCW and this chapter, and hold it separate and apart from all other money, funds, and accounts of the board. Moneys appropriated for this chapter to the farmlands preservation account must be distributed for the acquisition and preservation of farmlands in order to maintain the opportunity for agricultural activity upon these lands.

(2)(a) Moneys appropriated for this chapter to the farmlands preservation account may be distributed for (i) the fee simple or less than fee simple acquisition of farmlands; (ii) the enhancement or restoration of ecological functions on those properties; or (iii) both. In order for a farmland preservation grant to provide for an environmental enhancement or restoration project, the project must include the acquisition of a real property interest.

(b) If a city, county, nonprofit nature conservancy organization or association, or the conservation commission acquires a property through this program in fee simple, the city, county, nonprofit nature conservancy organization or association, or the conservation commission shall endeavor to secure preservation of the property through placing a conservation easement, or other form of deed restriction, on the property which dedicates the land to agricultural use and retains one or more property rights in perpetuity. Once an easement or other form of deed restriction is placed on the property, the city, county, nonprofit nature conservancy organization or association, or the conservation commission shall seek to sell the property, at fair market value, to a person or persons who will maintain the property in agricultural production. Any moneys from the sale of the property shall either be used to purchase interests in additional properties which meet the criteria in subsection (9) of this section, or to repay the grant from the state which was originally used to purchase the property.

(3) Cities, counties, nonprofit nature conservancy organizations or associations, and the conservation commission may apply for acquisition and enhancement or restoration funds for farmland preservation projects within their jurisdictions under subsection (1) of this section.

(4) The board may adopt rules establishing acquisition and enhancement or restoration policies and priorities for distributions from the farmlands preservation account.

(5) The acquisition of a property right in a project under this section by a county, city, nonprofit nature conservancy organization or association, or the conservation commission does not provide a right of access to the property by the public unless explicitly provided for in a conservation easement or other form of deed restriction.

(6) Except as provided in RCW 79A.15.030(7), moneys appropriated for this section may not be used by the board to fund staff positions or other overhead expenses, or by a city, county, nonprofit nature conservancy organization or association, or the conservation commission to fund operation or maintenance of areas acquired under this chapter.

(7) Moneys appropriated for this section may be used by grant recipients for costs incidental to restoration and acquisition, including, but not limited to, surveying expenses, fencing, and signing.

(8) The board may not approve a local project where the local agency's or nonprofit nature conservancy organization's or association's share is less than the amount to be awarded from the farmlands preservation account. In-kind contributions, including contributions of a real property interest in land, may be used to satisfy the local agency's or nonprofit nature conservancy organization's or association's share.

(9) In determining the acquisition priorities, the board must consider, at a minimum, the following criteria:

(a) Community support for the project;

(b) A recommendation as part of a limiting factors or critical pathways analysis, a watershed plan or habitat conservation plan, or a coordinated regionwide prioritization effort;

(c) The likelihood of the conversion of the site to nonagricultural or more highly developed usage;

(d) Consistency with a local land use plan, or a regional or statewide recreational or resource plan. The projects that assist in the implementation of local shoreline master plans updated according to RCW 90.58.080 or local comprehensive plans updated according to RCW 36.70A.130 must be highly considered in the process;

(e) Benefits to salmonids;

(f) Benefits to other fish and wildlife habitat;

(g) Integration with recovery efforts for endangered, threatened, or sensitive species;

(h) The viability of the site for continued agricultural production, including, but not limited to:

(i) Soil types;

(ii) On-site production and support facilities such as barns, irrigation systems, crop processing and storage facilities, wells, housing, livestock sheds, and other farming infrastructure;

(iii) Suitability for producing different types or varieties of crops;

(iv) Farm-to-market access;

(v) Water availability; and

(i) Other community values provided by the property when used as agricultural land, including, but not limited to:

(i) Viewshed;

(ii) Aquifer recharge;

(iii) Occasional or periodic collector for storm water runoff;

(iv) Agricultural sector job creation;

(v) Migratory bird habitat and forage area; and

(vi) Educational and curriculum potential.

(10) In allotting funds for environmental enhancement or restoration projects, the board will require the projects to meet the following criteria:

(a) Enhancement or restoration projects must further the ecological functions of the farmlands;

(b) The projects, such as fencing, bridging watercourses, replanting native vegetation, replacing culverts, clearing of waterways, etc., must be less than fifty percent of the acquisition cost of the project including any in-kind contribution by any party;

(c) The projects should be based on accepted methods of achieving beneficial enhancement or restoration results; and

(d) The projects should enhance the viability of the preserved farmland to provide agricultural production while conforming to any legal requirements for habitat protection.

(11) Before November 1st of each even-numbered year, the board will recommend to the governor a prioritized list of all projects to be funded under this section. The governor may remove projects from the list recommended by the board and must submit this amended list in the capital budget request to the legislature. The list must include, but not be limited to, a description of each project and any particular match requirement. [2009 c 341 § 5; 2007 c 241 § 38; 2005 c 303 § 7.]

Intent—Effective date—2007 c 241: See notes following RCW 79A.25.005.

Effective date—2005 c 303 §§ 1-14: See note following RCW 79A.15.010.

Chapter 79A.25 RCW

RECREATION AND CONSERVATION FUNDING BOARD

Sections

79A.25.080 Recreation resource account—Distribution of moneys transferred.
79A.25.240 Grants and loan administration.

79A.25.080 Recreation resource account—Distribution of moneys transferred. (1) Moneys transferred to the recreation resource account from the marine fuel tax refund account may be used when appropriated by the legislature, as well as any federal or other funds now or hereafter available, to pay the office and necessary administrative and coordinative costs of the recreation and conservation funding board established by RCW 79A.25.110. All moneys so transferred, except those appropriated as aforesaid, shall be divided into two equal shares and shall be used to benefit watercraft recreation in this state as follows:

(a) One share as grants to state agencies for (i) acquisition of title to, or any interests or rights in, marine recreation land, (ii) capital improvement and renovation of marine recreation land, including periodic dredging in accordance with subsection (2) of this section, if needed, to maintain or make the facility more useful, or (iii) matching funds in any case where federal or other funds are made available on a matching basis for purposes described in (a)(i) or (ii) of this subsection;

(b) One share as grants to public bodies to help finance (i) acquisition of title to, or any interests or rights in, marine recreation land, or (ii) capital improvement and renovation of marine recreation land, including periodic dredging in accordance with subsection (2) of this section, if needed, to maintain or make the facility more useful. A public body is authorized to use a grant, together with its own contribution, as matching funds in any case where federal or other funds are made available for purposes described in (a)(i) or (ii) of this subsection. The board may prescribe further terms and conditions for the making of grants in order to carry out the purposes of this chapter.

(2) For the purposes of this section "periodic dredging" is limited to dredging of materials that have been deposited in a channel due to unforeseen events. This dredging should extend the expected usefulness of the facility for at least five years.

(3) During the 2009-2011 fiscal biennium, the legislature may appropriate such amounts as reflect the excess fund balance in the recreation resource account to the state parks and recreation commission for maintenance and operation of parks and to improve accessibility for boaters and off-road vehicle users. This appropriation is not required to follow the specific distribution specified in subsection (1)(a) and (b) of this section. [2009 c 564 § 958; 2007 c 241 § 44; 2000 c 11 § 74; 1999 c 341 § 1; 1995 c 166 § 5; 1971 ex.s. c 140 § 1; 1965 ex.s. c 136 § 1; 1965 c 5 § 8 (Initiative Measure No. 215, approved November 3, 1964). Formerly RCW 43.99.080.]

Effective date—2009 c 564: See note following RCW 2.68.020.

Intent—Effective date—2007 c 241: See notes following RCW 79A.25.005.

79A.25.240 Grants and loan administration. The recreation and conservation office shall provide necessary grants and loan administration support to the salmon recovery funding board as provided in RCW 77.85.120. The office shall also be responsible for tracking salmon recovery expenditures under RCW 77.85.140. The office shall provide all necessary administrative support to the salmon recovery funding board, and the salmon recovery funding board shall be located with the office. [2009 c 345 § 13; 2007 c 241 § 57; 2003 c 39 § 44; 2000 c 11 § 78; 1999 sp.s. c 13 § 17.]

Finding—Intent—2009 c 345: See notes following RCW 77.85.030.

Intent—Effective date—2007 c 241: See notes following RCW 79A.25.005.

Severability—Effective date—1999 sp.s. c 13: See notes following RCW 75.46.005.

Chapter 79A.55 RCW
SCENIC RIVER SYSTEM

Sections

79A.55.020 Management policies—Development—Inclusion of management plans—Identification and exclusion of unsuitably developed lands—Boundaries of river areas—Hearings—Notice—Studies—Proposals for system additions.

79A.55.020 Management policies—Development—Inclusion of management plans—Identification and exclusion of unsuitably developed lands—Boundaries of river areas—Hearings—Notice—Studies—Proposals for system additions. (1) The commission shall develop and adopt management policies for publicly owned or leased land on the rivers designated by the legislature as being a part of the state's scenic river system and within the associated river areas. The commission may adopt rules identifying river classifications which reflect the characteristics common to various segments of scenic rivers and may adopt management policies consistent with local government's shoreline management master plans appropriate for each such river classification. All such policies shall be adopted by the commission in accordance with the provisions of chapter 34.05 RCW, as now or hereafter amended. Any variance with such a policy by any public agency shall be authorized only by the approval of the commission and shall be made only to alleviate unusual hardships unique to a given segment of the system.

(2) Any policies developed pursuant to subsection (1) of this section shall include management plans for protecting ecological, economic, recreational, aesthetic, botanical, scenic, geological, hydrological, fish and wildlife, historical, cultural, archaeological, and scientific features of the rivers designated as being in the system. Such policies shall also include management plans to encourage any nonprofit group, organization, association, person, or corporation to develop and adopt programs for the purpose of increasing fish propagation.

(3) The commission shall identify on a river by river basis any publicly owned or leased lands which could be included in a river area of the system but which are developed in a manner unsuitable for land to be managed as part of the system. The commission shall exclude lands so identified from the provisions of any management policies implementing the provisions of this chapter.

(4) The commission shall determine the boundaries which shall define the river area associated with any included river. With respect to the rivers named in RCW 79A.55.070, the commission shall make such determination, and those determinations authorized by subsection (3) of this section, within one year of September 21, 1977.

(5) Before making a decision regarding the river area to be included in the system, a variance in policy, or the excluding of land from the provisions of the management policies, the commission shall hold hearings in accord with chapter 34.05 RCW, with at least one public hearing to be held in the general locale of the river under consideration. The commission shall cause to be published in a newspaper of general circulation in the area which includes the river or rivers to be considered, a description, including a map showing such river or rivers, of the material to be considered at the public hearing. Such notice shall appear at least twice in the time period between two and four weeks prior to the public hearing.

The commission shall seek and receive comments from the public regarding potential additions to the system, shall initiate studies, and may submit to any session of the legislature proposals for additions to the state scenic river system. These proposals shall be accompanied by a detailed report on the factors which, in the commission's judgment, make an area a worthy addition to the system. [2009 c 187 § 6. Prior: 1999 c 249 § 802; 1999 c 151 § 1702; 1977 ex.s. c 161 § 3. Formerly RCW 79.72.030.]

Severability—1999 c 249: See note following RCW 79A.05.010.

Part headings not law—Effective date—1999 c 151: See notes following RCW 18.28.010.

Chapter 79A.75 RCW
STATE PARKS CENTENNIAL

Sections

79A.75.900 Expiration date—2004 c 14.

79A.75.900 Expiration date—2004 c 14. This act expires June 30, 2009. [2009 c 560 § 12; 2004 c 14 § 5.]

Intent—Effective date—Disposition of property and funds—Assignment/delegation of contractual rights or duties—2009 c 560: See notes following RCW 18.06.080.

Title 80
PUBLIC UTILITIES

Chapters

80.12 Transfers of property.
80.24 Regulatory fees.
80.28 Gas, electrical, and water companies.
80.36 Telecommunications.
80.80 Greenhouse gas emissions—Baseload electric generation performance standard.

Chapter 80.12 RCW
TRANSFERS OF PROPERTY

Sections

80.12.010 Definitions.
80.12.020 Order required to sell, merge, etc.—Exemption.
80.12.030 Disposal without authorization void—Approval or denial within eleven months, extension permitted.

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

(1) "Person" means an individual, partnership, joint venture, corporation, association, firm, public service company, or any other entity, however organized.

(2) "Public service company" means every company now or hereafter engaged in business in this state as a public utility and subject to regulation as to rates and service by the utilities and transportation commission under the provisions of this title. [2009 c 24 § 2; 1961 c 14 § 80.12.010. Prior: 1953 c 95 § 6; 1941 c 159 § 1, part; Rem. Supp. 1941 § 10440a.]

Finding—2009 c 24: "The legislature finds and declares that the Washington utilities and transportation commission should require that a net benefit to customers be shown in order to approve the acquisition of the franchises, properties, or facilities owned by a gas or electrical company in the state and which are necessary or useful in the performance of the duties of a gas or electrical company, and that its decision to approve or deny such an acquisition should be made within a prescribed period of time." [2009 c 24 § 1.]

80.12.020 Order required to sell, merge, etc.—Exemption. (1) No public service company shall sell, lease, assign or otherwise dispose of the whole or any part of its franchises, properties or facilities whatsoever, which are necessary or useful in the performance of its duties to the public, and no public service company shall, by any means whatsoever, directly or indirectly, merge or consolidate any of its franchises, properties or facilities with any other public service company, without having secured from the commission an order authorizing it to do so. The commission shall not approve any transaction under this section that would result in a person, directly or indirectly, acquiring a controlling interest in a gas or electrical company without a finding that the transaction would provide a net benefit to the customers of the company.

(2) This section shall not apply to any sale, lease, assignment or other disposal of such franchises, properties or facilities to a special purpose district as defined in RCW 36.96.010, city, county, or town. [2009 c 24 § 3; 1981 c 117 § 1; 1961 c 14 § 80.12.020. Prior: 1945 c 75 § 1; 1941 c 159 § 2; Rem. Supp. 1945 § 10440b.]

Finding—2009 c 24: See note following RCW 80.12.010.

80.12.030 Disposal without authorization void—Approval or denial within eleven months, extension permitted. (1) Any such sale, lease, assignment, or other disposition, merger or consolidation made without authority of the commission shall be void.

(2) The commission shall enter an order approving or denying a transaction under RCW 80.12.020 or 80.12.040 within eleven months of the date of filing, which the commission may extend up to four months for cause. [2009 c 24 § 4; 1961 c 14 § 80.12.030. Prior: 1941 c 159 § 3; Rem. Supp. 1941 § 10440c.]

Finding—2009 c 24: See note following RCW 80.12.010.

Chapter 80.24 RCW
REGULATORY FEES

Sections

80.24.060 Pipeline safety fee—Reports—Procedure to contest fees—Regulatory incentive program.

80.24.060 Pipeline safety fee—Reports—Procedure to contest fees—Regulatory incentive program. (1)(a) Every gas company and every interstate gas pipeline company subject to inspection or enforcement by the commission shall pay an annual pipeline safety fee to the commission. The pipeline safety fees received by the commission shall be deposited in the pipeline safety account created in RCW 81.88.050.

(b) The aggregate amount of fees set shall be sufficient to recover the reasonable costs of administering the pipeline safety program, taking into account federal funds used to offset the costs. The fees established under this section shall be designed to generate revenue not exceeding appropriated levels of funding for the current fiscal year. At a minimum, the fees established under this section shall be sufficient to adequately fund pipeline inspection personnel, the timely review of pipeline safety and integrity plans, the timely development of spill response plans, the timely development of accurate maps of pipeline locations, participation in federal pipeline safety efforts to the extent allowed by law, and the staffing of the citizens committee on pipeline safety.

(c) Increases in the aggregate amount of fees over the immediately preceding fiscal year are subject to the requirements of RCW 43.135.055.

(2) The commission shall by rule establish the methodology it will use to set the appropriate fee for each entity subject to this section. The methodology shall provide for an equitable distribution of program costs among all entities subject to the fee. The fee methodology shall provide for:

(a) Direct assignment of average costs associated with annual standard inspections, including the average number of inspection days per year. In establishing these directly assignable costs, the commission shall consider the requirements and guidelines of the federal government, state safety standards, and good engineering practices; and

(b) A uniform and equitable means of estimating and allocating costs of other duties relating to inspecting pipelines for safety that are not directly assignable, including but not limited to design review and construction inspections, specialized inspections, incident investigations, geographic mapping system design and maintenance, and administrative support.

(3) The commission shall require reports from those entities subject to this section in the form and at such time as necessary to set the fees. After considering the reports supplied by the entities, the commission shall set the amount of the fee payable by each entity by general order entered before a date established by rule.

(4) For companies subject to RCW 80.24.010, the commission shall collect the pipeline safety fee as part of the fee specified in RCW 80.24.010. The commission shall allocate the moneys collected under RCW 80.24.010 between the pipeline safety program and for other regulatory purposes. The commission shall adopt rules that assure that fee moneys related to the pipeline safety program are maintained separately from other moneys collected by the commission under this chapter.

(5) Any payment of the fee imposed by this section made after its due date must include a late fee of two percent of the amount due. Delinquent fees accrue interest at the rate of one percent per month.

(6) The commission shall keep accurate records of the costs incurred in administering its gas pipeline safety program, and the records are open to inspection by interested parties. The records and data upon which the commission's determination is made shall be prima facie correct in any proceeding to challenge the reasonableness or correctness of any order of the commission fixing fees and distributing regulatory expenses.

(7) If any entity seeks to contest the imposition of a fee imposed under this section, that entity shall pay the fee and request a refund within six months of the due date for the payment by filing a petition for a refund with the commission. The commission shall establish by rule procedures for handling refund petitions and may delegate the decisions on refund petitions to the secretary of the commission.

(8) After establishing the fee methodology by rule as required in subsection (2) of this section, the commission shall create a regulatory incentive program for pipeline safety programs in collaboration with the citizens committee on pipeline safety. The regulatory incentive program created by the commission shall not shift costs among companies paying pipeline safety fees and shall not decrease revenue to pipeline safety programs. [2009 c 91 § 1; 2001 c 238 § 2.]

Intent—Finding—2001 c 238: "The intent of this act is to ensure a sustainable, comprehensive, pipeline safety program, to protect the health and safety of the citizens of the state of Washington, and [to] maintain the quality of the state's environment. The legislature finds that public safety and the environment are best protected by securing permanent funding for this program through establishment of a regulatory fee imposed on hazardous liquids and gas pipelines." [2001 c 238 § 1.]

Effective date—2001 c 238: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2001." [2001 c 238 § 13.]

Chapter 80.28 RCW
GAS, ELECTRICAL, AND WATER COMPANIES

Sections

80.28.068 Rates—Low-income customers.
80.28.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. *(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*

80.28.068 Rates—Low-income customers. Upon request by an electrical or gas company, or other party to a general rate case hearing, the commission may approve rates, charges, services, and/or physical facilities at a discount for low-income senior customers and low-income customers. Expenses and lost revenues as a result of these discounts shall be included in the company's cost of service and recovered in rates to other customers. [2009 c 32 § 1; 1999 c 62 § 1.]

80.28.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. ***(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 186.]

Chapter 80.36 RCW
TELECOMMUNICATIONS

Sections

80.36.005 Definitions.
80.36.430 Washington telephone assistance program—Excise tax—Expenses of community service voice mail.
80.36.475 Repealed.

80.36.005 Definitions. The definitions in this section apply throughout RCW 80.36.410 through *80.36.475, unless the context clearly requires otherwise.

(1) "Community action agency" means local community action agencies or local community service agencies designated by the department of commerce under chapter 43.63A RCW.

(2) "Community agency" means local community agencies that administer community service voice mail programs.

(3) "Community service voice mail" means a computerized voice mail system that provides low-income recipients with: (a) An individually assigned telephone number; (b) the ability to record a personal greeting; and (c) a private security code to retrieve messages.

(4) "Department" means the department of social and health services.

(5) "Service year" means the period between July 1st and June 30th. [2009 c 565 § 53; 2003 c 134 § 1; 2002 c 104 § 1; 1993 c 249 § 1.]

Reviser's note: *(1) RCW 80.36.475 was repealed by 2009 c 518 § 10.

(2) The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Effective date—2003 c 134: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2003." [2003 c 134 § 12.]

Effective date—1993 c 249: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 7, 1993]." [1993 c 249 § 4.]

80.36.430 Washington telephone assistance program—Excise tax—Expenses of community service voice mail. (1) The Washington telephone assistance program shall be funded by a telephone assistance excise tax on all switched access lines and by funds from any federal government or other programs for this purpose. Switched access lines are defined in RCW 82.14B.020. The telephone assistance excise tax shall be applied equally to all residential and business access lines not to exceed fourteen cents per month. The department shall submit an approved annual budget for the Washington telephone assistance program to the department of revenue no later than March 1st prior to the beginning of each fiscal year. The department of revenue shall then determine the amount of telephone assistance excise tax to be placed on each switched access line and shall inform local exchange companies and the utilities and transportation commission of this amount no later than May 1st. The department of revenue shall determine the amount of telephone assistance excise tax by dividing the total of the program budget funded by the telephone assistance excise tax, as submitted by the department, by the total number of switched access lines in the prior calendar year. The telephone assistance excise tax shall be separately identified on each ratepayer's bill as the "Washington telephone assistance program." All money collected from the telephone assistance excise tax shall be transferred to a telephone assistance fund administered by the department.

(2) Local exchange companies shall bill the fund for their expenses incurred in offering the telephone assistance program, including administrative and program expenses. The department shall disburse the money to the local exchange companies. The department is exempted from having to conclude a contract with local exchange companies in order to effect this reimbursement. The department shall recover its administrative costs from the fund. The department may specify by rule the range and extent of administrative and program expenses that will be reimbursed to local exchange companies.

(3) The department shall enter into an agreement with the department of community, trade, and economic development for an amount not to exceed eight percent of the prior fiscal year's total revenue for the administrative and program expenses of providing community service voice mail services. The community service voice mail service may include toll-free lines in community action agencies through which recipients can access their community service voice mailboxes at no charge.

(4) During the 2009-2011 biennium, the department shall enter into an agreement with the military department for one million dollars to support the WIN 211 program. [2009 c 564 § 960; 2004 c 254 § 2; 2003 c 134 § 4; 1990 c 170 § 3; 1987 c 229 § 5.]

Effective date—2009 c 564: See note following RCW 2.68.020.

Responsibility for collection of tax—Implementation—2004 c 254: See notes following RCW 43.20A.725.

Effective date—2004 c 254: See note following RCW 82.72.010.

Effective date—2003 c 134: See note following RCW 80.36.005.

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

Chapter 80.80 RCW

GREENHOUSE GAS EMISSIONS—BASELOAD ELECTRIC GENERATION PERFORMANCE STANDARD

Sections

80.80.010 Definitions.
80.80.040 Greenhouse gas emissions performance standards—Rules—Sequestration.
80.80.060 Electrical companies—Baseload electric generation—Long-term financial commitments—Rules.

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

(1) "Attorney general" means the Washington state office of the attorney general.

(2) "Auditor" means: (a) The Washington state auditor's office or its designee for consumer-owned utilities under its jurisdiction; or (b) an independent auditor selected by a consumer-owned utility that is not under the jurisdiction of the state auditor.

(3) "Average available greenhouse gas emissions output" means the level of greenhouse gas emissions as surveyed and determined by the energy policy division of the department of commerce under RCW 80.80.050.

(4) "Baseload electric generation" means electric generation from a power plant that is designed and intended to provide electricity at an annualized plant capacity factor of at least sixty percent.

(5) "Cogeneration facility" means a power plant in which the heat or steam is also used for industrial or commercial heating or cooling purposes and that meets federal energy regulatory commission standards for qualifying facilities under the public utility regulatory policies act of 1978 (16 U.S.C. Sec. 824a-3), as amended.

(6) "Combined-cycle natural gas thermal electric generation facility" means a power plant that employs a combination of one or more gas turbines and steam turbines in which electricity is produced in the steam turbine from otherwise lost waste heat exiting from one or more of the gas turbines.

(7) "Commission" means the Washington utilities and transportation commission.

(8) "Consumer-owned utility" means a municipal utility formed under Title 35 RCW, a public utility district formed under Title 54 RCW, an irrigation district formed under chapter 87.03 RCW, a cooperative formed under chapter 23.86 RCW, a mutual corporation or association formed under chapter 24.06 RCW, or port district within which an industrial district has been established as authorized by Title 53 RCW, that is engaged in the business of distributing electricity to more than one retail electric customer in the state.

(9) "Department" means the department of ecology.

(10) "Distributed generation" means electric generation connected to the distribution level of the transmission and distribution grid, which is usually located at or near the intended place of use.

(11) "Electric utility" means an electrical company or a consumer-owned utility.

(12) "Electrical company" means a company owned by investors that meets the definition of RCW 80.04.010.

(13) "Governing board" means the board of directors or legislative authority of a consumer-owned utility.

(14) "Greenhouse gases" includes carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

(15) "Long-term financial commitment" means:

(a) Either a new ownership interest in baseload electric generation or an upgrade to a baseload electric generation facility; or

(b) A new or renewed contract for baseload electric generation with a term of five or more years for the provision of retail power or wholesale power to end-use customers in this state.

(16) "Plant capacity factor" means the ratio of the electricity produced during a given time period, measured in kilowatt-hours, to the electricity the unit could have produced if it had been operated at its rated capacity during that period, expressed in kilowatt-hours.

(17) "Power plant" means a facility for the generation of electricity that is permitted as a single plant by a jurisdiction inside or outside the state.

(18) "Upgrade" means any modification made for the primary purpose of increasing the electric generation capacity of a baseload electric generation facility. "Upgrade" does not include routine or necessary maintenance, installation of emission control equipment, installation, replacement, or modification of equipment that improves the heat rate of the facility, or installation, replacement, or modification of equipment for the primary purpose of maintaining reliable generation output capability that does not increase the heat input or fuel usage as specified in existing generation air quality permits as of July 22, 2007, but may result in incidental increases in generation capacity. [2009 c 565 § 54; 2009 c 448 § 1; 2007 c 307 § 2.]

Reviser's note: This section was amended by 2009 c 448 § 1 and by 2009 c 565 § 54, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

80.80.040 Greenhouse gas emissions performance standards—Rules—Sequestration. (1) Beginning July 1, 2008, the greenhouse gas emissions performance standard for all baseload electric generation for which electric utilities enter into long-term financial commitments on or after such date is the lower of:

(a) One thousand one hundred pounds of greenhouse gases per megawatt-hour; or

(b) The average available greenhouse gas emissions output as determined under RCW 80.80.050.

(2) This chapter does not apply to long-term financial commitments with the Bonneville power administration.

(3) All baseload electric generation facilities in operation as of June 30, 2008, are deemed to be in compliance with the greenhouse gas emissions performance standard established under this section until the facilities are the subject of long-term financial commitments. All baseload electric generation that commences operation after June 30, 2008, and is located in Washington, must comply with the greenhouse gas emissions performance standard established in subsection (1) of this section.

(4) All electric generation facilities or power plants powered exclusively by renewable resources, as defined in RCW 19.280.020, are deemed to be in compliance with the greenhouse gas emissions performance standard established under this section.

(5) All cogeneration facilities in the state that are fueled by natural gas or waste gas or a combination of the two fuels, and that are in operation as of June 30, 2008, are deemed to be in compliance with the greenhouse gas emissions performance standard established under this section until the facilities are the subject of a new ownership interest or are upgraded.

(6) In determining the rate of emissions of greenhouse gases for baseload electric generation, the total emissions associated with producing electricity shall be included.

(7) In no case shall a long-term financial commitment be determined to be in compliance with the greenhouse gas emissions performance standard if the commitment includes more than twelve percent of electricity from unspecified sources.

(8) For a long-term financial commitment with multiple power plants, each specified power plant must be treated individually for the purpose of determining the annualized plant capacity factor and net emissions, and each power plant must comply with subsection (1) of this section, except as provided in subsections (3) through (5) of this section.

(9) The department shall establish an output-based methodology to ensure that the calculation of emissions of greenhouse gases for a cogeneration facility recognizes the total usable energy output of the process, and includes all greenhouse gases emitted by the facility in the production of both electrical and thermal energy. In developing and implementing the greenhouse gas emissions performance standard, the department shall consider and act in a manner consistent with any rules adopted pursuant to the public utilities regulatory policy act of 1978 (16 U.S.C. Sec. 824a-3), as amended.

(10) The following greenhouse gas emissions produced by baseload electric generation owned or contracted through a long-term financial commitment shall not be counted as emissions of the power plant in determining compliance with the greenhouse gas emissions performance standard:

(a) Those emissions that are injected permanently in geological formations;

(b) Those emissions that are permanently sequestered by other means approved by the department; and

(c) Those emissions sequestered or mitigated as approved under subsection (16) of this section.

(11) In adopting and implementing the greenhouse gas emissions performance standard, the department of community, trade, and economic development energy policy division, in consultation with the commission, the department, the Bonneville power administration, the western electricity coordination council, the energy facility site evaluation council, electric utilities, public interest representatives, and consumer representatives, shall consider the effects of the greenhouse gas emissions performance standard on system reliability and overall costs to electricity customers.

(12) In developing and implementing the greenhouse gas emissions performance standard, the department shall, with assistance of the commission, the department of community, trade, and economic development energy policy division, and

electric utilities, and to the extent practicable, address long-term purchases of electricity from unspecified sources in a manner consistent with this chapter.

(13) The directors of the energy facility site evaluation council and the department shall each adopt rules under chapter 34.05 RCW in coordination with each other to implement and enforce the greenhouse gas emissions performance standard. The rules necessary to implement this section shall be adopted by June 30, 2008.

(14) In adopting the rules for implementing this section, the energy facility site evaluation council and the department shall include criteria to be applied in evaluating the carbon sequestration plan, for baseload electric generation that will rely on subsection (10) of this section to demonstrate compliance, but that will commence sequestration after the date that electricity is first produced. The rules shall include but not be limited to:

(a) Provisions for financial assurances, as a condition of plant operation, sufficient to ensure successful implementation of the carbon sequestration plan, including construction and operation of necessary equipment, and any other significant costs;

(b) Provisions for geological or other approved sequestration commencing within five years of plant operation, including full and sufficient technical documentation to support the planned sequestration;

(c) Provisions for monitoring the effectiveness of the implementation of the sequestration plan;

(d) Penalties for failure to achieve implementation of the plan on schedule;

(e) Provisions for an owner to purchase emissions reductions in the event of the failure of a sequestration plan under subsection (16) of this section; and

(f) Provisions for public notice and comment on the carbon sequestration plan.

(15)(a) Except as provided in (b) of this subsection, as part of its role enforcing the greenhouse gas emissions performance standard, the department shall determine whether sequestration or a plan for sequestration will provide safe, reliable, and permanent protection against the greenhouse gases entering the atmosphere from the power plant and all ancillary facilities.

(b) For facilities under its jurisdiction, the energy facility site evaluation council shall contract for review of sequestration or the carbon sequestration plan with the department consistent with the conditions under (a) of this subsection, consider the adequacy of sequestration or the plan in its adjudicative proceedings conducted under RCW 80.50.090(3), and incorporate specific findings regarding adequacy in its recommendation to the governor under RCW 80.50.100.

(16) A project under consideration by the energy facility site evaluation council by July 22, 2007, is required to include all of the requirements of subsection (14) of this section in its carbon sequestration plan submitted as part of the energy facility site evaluation council process. A project under consideration by the energy facility site evaluation council by July 22, 2007, that receives final site certification agreement approval under chapter 80.50 RCW shall make a good faith effort to implement the sequestration plan. If the project owner determines that implementation is not feasible, the project owner shall submit documentation of that determination to the energy facility site evaluation council. The documentation shall demonstrate the steps taken to implement the sequestration plan and evidence of the technological and economic barriers to successful implementation. The project owner shall then provide to the energy facility site evaluation council notification that they shall implement the plan that requires the project owner to meet the greenhouse gas emissions performance standard by purchasing verifiable greenhouse gas emissions reductions from an electric generating facility located within the western interconnection, where the reduction would not have occurred otherwise or absent this contractual agreement, such that the sum of the emissions reductions purchased and the facility's emissions meets the standard for the life of the facility. [2009 c 448 § 2; 2007 c 307 § 5.]

80.80.060 Electrical companies—Baseload electric generation—Long-term financial commitments—Rules. (1) No electrical company may enter into a long-term financial commitment unless the baseload electric generation supplied under such a long-term financial commitment complies with the greenhouse gases [gas] emissions performance standard established under RCW 80.80.040.

(2) In order to enforce the requirements of this chapter, the commission shall review in a general rate case or as provided in subsection (5) of this section any long-term financial commitment entered into by an electrical company after June 30, 2008, to determine whether the baseload electric generation to be supplied under that long-term financial commitment complies with the greenhouse gases [gas] emissions performance standard established under RCW 80.80.040.

(3) In determining whether a long-term financial commitment is for baseload electric generation, the commission shall consider the design of the power plant and its intended use, based upon the electricity purchase contract, if any, permits necessary for the operation of the power plant, and any other matter the commission determines is relevant under the circumstances.

(4) Upon application by an electric utility, the commission may provide a case-by-case exemption from the greenhouse gases [gas] emissions performance standard to address: (a) Unanticipated electric system reliability needs; (b) extraordinary cost impacts on utility ratepayers; or (c) catastrophic events or threat of significant financial harm that may arise from unforeseen circumstances.

(5) Upon application by an electrical company, the commission shall determine whether the company's proposed decision to acquire electric generation or enter into a power purchase agreement for electricity complies with the greenhouse gases [gas] emissions performance standard established under RCW 80.80.040. The commission shall not decide in a proceeding under this subsection (5) issues involving the actual costs to construct and operate the selected resource, cost recovery, or other issues reserved by the commission for decision in a general rate case or other proceeding for recovery of the resource or contract costs.

(6) An electrical company may account for and defer for later consideration by the commission costs incurred in connection with a long-term financial commitment, including operating and maintenance costs, depreciation, taxes, and cost of invested capital. The deferral begins with the date on

which the power plant begins commercial operation or the effective date of the power purchase agreement and continues for a period not to exceed twenty-four months; provided that if during such period the company files a general rate case or other proceeding for the recovery of such costs, deferral ends on the effective date of the final decision by the commission in such proceeding. Creation of such a deferral account does not by itself determine the actual costs of the long-term financial commitment, whether recovery of any or all of these costs is appropriate, or other issues to be decided by the commission in a general rate case or other proceeding for recovery of these costs. For the purpose of this subsection (6) only, the term "long-term financial commitment" also includes an electric company's ownership or power purchase agreement with a term of five or more years associated with an eligible renewable resource as defined in RCW 19.285.030.

(7) The commission shall consult with the department to apply the procedures adopted by the department to verify the emissions of greenhouse gases from baseload electric generation under RCW 80.80.040. The department shall report to the commission whether baseload electric generation will comply with the greenhouse gases [gas] emissions performance standard for the duration of the period the baseload electric generation is supplied to the electrical company.

(8) The commission shall adopt rules for the enforcement of this section with respect to electrical companies and adopt procedural rules for approving costs incurred by an electrical company under subsection (4) of this section.

(9) The commission shall adopt rules necessary to implement this section by December 31, 2008. [2009 c 448 § 3; 2009 c 147 § 1; 2007 c 307 § 8.]

Reviser's note: This section was amended by 2009 c 147 § 1 and by 2009 c 448 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Title 81

TRANSPORTATION

Chapters

81.24 Regulatory fees.
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Chapter 81.24 RCW
REGULATORY FEES

Sections

81.24.090 Pipeline safety fee—Reports—Procedure to contest fees—Regulatory incentive program.

81.24.090 Pipeline safety fee—Reports—Procedure to contest fees—Regulatory incentive program. (1)(a) Every hazardous liquid pipeline company as defined in RCW 81.88.010 shall pay an annual pipeline safety fee to the commission. The pipeline safety fees received by the commission shall be deposited in the pipeline safety account created in RCW 81.88.050.

(b) The aggregate amount of fees set shall be sufficient to recover the reasonable costs of administering the pipeline safety program, taking into account federal funds used to offset the costs. The fees established under this section shall be designed to generate revenue not exceeding appropriated levels of funding for the current fiscal year. At a minimum, the fees established under this section shall be sufficient to adequately fund pipeline inspection personnel, the timely review of pipeline safety and integrity plans, the timely development of spill response plans, the timely development of accurate maps of pipeline locations, participation in federal pipeline safety efforts to the extent allowed by law, and the staffing of the citizens committee on pipeline safety.

(c) Increases in the aggregate amount of fees over the immediately preceding fiscal year are subject to the requirements of RCW 43.135.055.

(2) The commission shall by rule establish the methodology it will use to set the appropriate fee for each entity subject to this section. The methodology shall provide for an equitable distribution of program costs among all entities subject to the fee. The fee methodology shall provide for:

(a) Direct assignment of average costs associated with annual standard inspections, including the average number of inspection days per year. In establishing these directly assignable costs, the commission shall consider the requirements and guidelines of the federal government, state safety standards, and good engineering practices; and

(b) A uniform and equitable means of estimating and allocating costs of other duties relating to inspecting pipelines for safety that are not directly assignable, including but not limited to design review and construction inspections, specialized inspections, incident investigations, geographic mapping system design and maintenance, and administrative support.

(3) The commission shall require reports from those entities subject to this section in the form and at such time as necessary to set the fees. After considering the reports supplied by the entities, the commission shall set the amount of the fee payable by each entity by general order entered before a date established by rule.

(4) For companies subject to RCW 81.24.010, the commission shall collect the pipeline safety fee as part of the fee specified in RCW 81.24.010. The commission shall allocate the moneys collected under RCW 81.24.010 between the pipeline safety program and for other regulatory purposes. The commission shall adopt rules that assure that fee moneys related to the pipeline safety program are maintained separately from other moneys collected by the commission under this chapter.

(5) Any payment of the fee imposed by this section made after its due date must include a late fee of two percent of the amount due. Delinquent fees accrue interest at the rate of one percent per month.

(6) The commission shall keep accurate records of the costs incurred in administering its hazardous liquid pipeline safety program, and the records are open to inspection by interested parties. The records and data upon which the commission's determination is made shall be prima facie correct in any proceeding to challenge the reasonableness or correctness of any order of the commission fixing fees and distributing regulatory expenses.

(7) If any entity seeks to contest the imposition of a fee imposed under this section, that entity shall pay the fee and request a refund within six months of the due date for the payment by filing a petition for a refund with the commission. The commission shall establish by rule procedures for handling refund petitions and may delegate the decisions on refund petitions to the secretary of the commission.

(8) After establishing the fee methodology by rule as required in subsection (2) of this section, the commission shall create a regulatory incentive program for pipeline safety programs in collaboration with the citizens committee on pipeline safety. The regulatory incentive program created by the commission shall not shift costs among companies paying pipeline safety fees and shall not decrease revenue to pipeline safety programs. [2009 c 91 § 2; 2001 c 238 § 3.]

Intent—Finding—Effective date—2001 c 238: See notes following RCW 80.24.060.

Chapter 81.28 RCW
COMMON CARRIERS IN GENERAL

Sections

81.28.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. *(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*

81.28.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. ***(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 187.]

Chapter 81.40 RCW
RAILROADS—EMPLOYEE REQUIREMENTS AND REGULATIONS

Sections

81.40.080 Employee shelters—Penalty.

81.40.080 Employee shelters—Penalty. (1) It shall be unlawful for any railroad company, corporation, association or other person owning, controlling or operating any line of railroad in the state of Washington, to build, construct, reconstruct, or repair railroad car equipment or motive power in this state without first erecting and maintaining at every point where five employees or more are regularly employed on such work, a shed over a sufficient portion of the tracks used for such work, so as to provide that all persons regularly employed in such work shall be sheltered and protected from rain and other inclement weather: PROVIDED, That the provisions of this section shall not apply at points where it is necessary to make light repairs only on equipment or motive power, nor to equipment loaded with time or perishable freight, nor to equipment when trains are being held for the movement of equipment, nor to equipment on tracks where trains arrive or depart or are assembled or made up for departure. The term "light repairs," as herein used, shall not include repairs usually made in roundhouse, shop or shed upon well equipped railroads.

(2) Any railroad company or officer or agent thereof, or any other person, who violates this section by failing or refusing to comply with its provisions is guilty of a misdemeanor, and each day's failure or refusal to comply shall be considered a separate offense. [2009 c 549 § 1030; 2003 c 53 § 389; 1961 c 14 § 81.40.080. Prior: 1941 c 238 § 1; Rem. Supp. 1941 § 7666-40.]

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

Chapter 81.48 RCW
RAILROADS—OPERATING REQUIREMENTS AND REGULATIONS

Sections

81.48.050 Trains to stop at railroad crossings.

81.48.050 Trains to stop at railroad crossings. All railroads and street railroads, operating in this state shall cause their trains and cars to come to a full stop at a distance not greater than five hundred feet before crossing the tracks of another railroad crossing at grade, excepting at crossings where there are established signal towers, and signal operators, interlocking plants or gates. [2009 c 549 § 1031; 1961 c 14 § 81.48.050. Prior: 1911 c 117 § 69; RRS § 10405.]

Chapter 81.64 RCW
STREET RAILWAYS

Sections

81.64.090 Competent employees required—"Competent" defined—Penalty.

81.64.090 Competent employees required—"Competent" defined—Penalty. (1) Street railway or streetcar companies, or streetcar corporations, shall employ none but competent persons to operate or assist as conductors, motor operators, or grip operators upon any street railway, or streetcar line in this state.

(2) A person shall be deemed competent to operate or assist in operating cars or (dummies) usually used by street railway or streetcar companies, or corporations, only after first having served at least three days under personal instruction of a regularly employed conductor, motor operator, or grip operator on a car or dummy in actual service on the particular street railway or streetcar line for which the service of an additional person or additional persons may be required: PROVIDED, That during a strike on the streetcar lines the railway companies may employ competent persons who have not worked three days on the particular streetcar line.

(3) Any violation of this section by the president, secretary, manager, superintendent, assistant superintendent, stockholder, or other officer or employee of any company or corporation owning or operating any street railway or streetcar line or any receiver of street railway or streetcar company, or street railway or streetcar corporations appointed by any court within this state to operate such car line is a misdemeanor punishable by a fine in any amount not less than fifty dollars nor more than two hundred dollars, or imprisonment in the county jail for a term of thirty days, or both such fine and imprisonment at the discretion of the court. [2009 c 549 § 1032; 2003 c 53 § 396; 1961 c 14 § 81.64.090. Prior: 1901 c 103 § 1; RRS § 11073.]

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

Chapter 81.66 RCW

TRANSPORTATION FOR PERSONS WITH SPECIAL NEEDS

Sections

81.66.010 Definitions.

81.66.010 Definitions. The definitions set forth in this section shall apply throughout this chapter, unless the context clearly indicates otherwise.

(1) "Corporation" means a corporation, company, association, or joint stock association.

(2) "Person" means an individual, firm, or a copartnership.

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

(4) "Private, nonprofit transportation provider" means any private, nonprofit corporation providing transportation services for compensation solely to persons with special transportation needs, or pursuant to a contract with a state agency or funded by a grant issued by the department of transportation. [2009 c 557 § 3; 1996 c 244 § 1; 1979 c 111 § 4.]

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

Severability—1979 c 111: See note following RCW 46.74.010.

Chapter 81.68 RCW

AUTO TRANSPORTATION COMPANIES

Sections

81.68.015 Application of chapter restricted.

81.68.015 Application of chapter restricted. This chapter does not apply to corporations or persons, their lessees, trustees, receivers, or trustees appointed by any court whatsoever insofar as they own, control, operate, or manage taxicabs, hotel buses, school buses, or any other carrier that does not come within the term "auto transportation company" as defined in RCW 81.68.010.

This chapter does not apply to persons operating motor vehicles when operated wholly within the limits of incorporated cities or towns, and for a distance not exceeding three road miles beyond the corporate limits of the city or town in Washington in which the original starting point of the vehicle is located, and which operation either alone or in conjunction with another vehicle or vehicles is not a part of any journey beyond the three-mile limit.

This chapter does not apply to commuter ride sharing or ride sharing for persons with special transportation needs in accordance with RCW 46.74.010, so long as the ride-sharing operation does not compete with or infringe upon comparable service actually being provided before the initiation of the ride-sharing operation by an existing auto transportation company certificated under this chapter.

This chapter does not apply to a service carrying passengers for compensation over any public highway in this state between fixed termini or over a regular route if the commission finds, with or without a hearing, that the service does not serve an essential transportation purpose, is solely for recreation, and would not adversely affect the operations of the holder of a certificate under this chapter, and that exemption from this chapter is otherwise in the public interest. Companies providing these services must, however, obtain a permit under chapter 81.70 RCW.

This chapter does not apply to a service carrying passengers for compensation over any public highway in this state between fixed termini or over a regular route if the commission finds, with or without a hearing, that the service is provided pursuant to a contract with a state agency, or funded by a grant issued by the department of transportation, and that exemption from this chapter is otherwise in the public interest. Companies providing these services must, however, obtain a permit under chapter 81.70 RCW. [2009 c 557 § 1; 2007 c 234 § 47; 1989 c 163 § 2; 1984 c 166 § 2.]

Chapter 81.70 RCW

PASSENGER CHARTER CARRIERS

Sections

81.70.220 Certificate or registration required.

81.70.220 Certificate or registration required. (1) No person may engage in the business of a charter party carrier or excursion service carrier of persons over any public highway without first having obtained a certificate from the commission to do so or having registered as an interstate carrier.

(2) An auto transportation company carrying passengers for compensation over any public highway in this state between fixed termini or over a regular route that is not required to hold an auto transportation certificate because of a commission finding under RCW 81.68.015 must obtain a certificate under this chapter. [2009 c 557 § 4; 1989 c 163 § 7; 1988 c 30 § 2.]

Chapter 81.80 RCW
MOTOR FREIGHT CARRIERS

Sections

81.80.010 Definitions.
81.80.040 Exempt vehicles.
81.80.070 Common carriers, contract carriers, and temporary carriers—Permit required.
81.80.075 Household goods carriers—Permit required, penalty, cease and desist orders.
81.80.280 Cancellation, suspension, and alteration of permits—Notice by household goods carriers.
81.80.357 Advertising—Household goods—Permit number required—Penalty.
81.80.372 Rights or privileges for compensatory services.
81.80.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. *(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*

81.80.010 Definitions. The definitions set forth in this section apply throughout this chapter.

(1) "Common carrier" means any person who undertakes to transport property for the general public by motor vehicle for compensation, whether over regular or irregular routes, or regular or irregular schedules, including motor vehicle operations of other carriers by rail or water and of express or forwarding companies.

(2) "Contract carrier" includes all motor vehicle operators not included under the terms "common carrier" and "private carrier" as defined in this section, and further includes any person who under special and individual contracts or agreements transports property by motor vehicle for compensation.

(3) "Common carrier" and "contract carrier" includes persons engaged in the business of providing, contracting for, or undertaking to provide transportation of property for compensation over the public highways of the state of Washington as brokers or forwarders.

(4) "Exempt carrier" means any person operating a vehicle exempted under RCW 81.80.040.

(5) "Household goods carrier" means a person who transports for compensation, by motor vehicle within this state, or who advertises, solicits, offers, or enters into an agreement to transport household goods as defined by the commission.

(6) "Motor carrier" includes "common carrier," "contract carrier," "private carrier," and "exempt carrier" as defined in this section.

(7) "Motor vehicle" means any truck, trailer, semitrailer, tractor, dump truck which uses a hydraulic or mechanical device to dump or discharge its load, or any self-propelled or motor-driven vehicle used upon any public highway of this state for the purpose of transporting property, but not including baggage, mail, and express transported on the vehicles of auto transportation companies carrying passengers.

(8) "Person" includes an individual, firm, copartnership, corporation, company, or association or their lessees, trustees, or receivers.

(9) A "private carrier" is a person who transports by his or her own motor vehicle, with or without compensation, property which is owned or is being bought or sold by the person, or property where the person is the seller, purchaser, lessee, or bailee and the transportation is incidental to and in furtherance of some other primary business conducted by the person in good faith.

(10) "Public highway" means every street, road, or highway in this state.

(11) "Vehicle" means every device capable of being moved upon a public highway and in, upon, or by which any person or property is or may be transported or drawn upon a public highway, except devices moved by human or animal power or used exclusively upon stationary rail or tracks. [2009 c 94 § 1; 2007 c 234 § 68; 1989 c 60 § 1; 1988 c 31 § 1; 1982 c 71 § 1; 1967 c 69 § 1; 1961 c 14 § 81.80.010. Prior: 1937 c 166 § 2; 1935 c 184 § 2; RRS § 6382-2.]

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

Severability—1982 c 71: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 c 71 § 5.]

Severability—1967 c 69: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1967 c 69 § 4.]

81.80.040 Exempt vehicles. (1) The provisions of this chapter, except where specifically otherwise provided, and except the provisions providing for licenses, shall not apply to:

(a) Motor vehicles when operated in transportation exclusively within the corporate limits of any city or town of less than ten thousand population unless contiguous to a city or town of ten thousand population or over, nor between contiguous cities or towns both or all of which are less than ten thousand population;

(b) Motor vehicles when operated in transportation wholly within the corporate limits of cities or towns of ten thousand or more but less than thirty thousand population, or between such cities or towns when contiguous, as to which the commission, after investigation and the issuance of an order thereon, has determined that no substantial public interest exists which requires that such transportation be subject to regulation under this chapter;

(c) Motor vehicles when transporting exclusively the United States mail or in the transportation of newspapers or periodicals;

(d) Motor vehicles owned and operated by the United States, the state of Washington, or any county, city, town, or municipality therein, or by any department of them, or either of them;

(e) Motor vehicles specially constructed for towing not more than two disabled, unauthorized, or repossessed motor vehicles, wrecking, or exchanging an operable vehicle for a disabled vehicle and not otherwise used in transporting goods for compensation. For the purposes of this subsection (1)(e),

a vehicle is considered to be repossessed only from the time of its actual repossession through the end of its initial tow;

(f) Motor vehicles normally owned and operated by farmers in the transportation of their own farm, orchard, or dairy products, including livestock and plant or animal wastes, from point of production to market, or in the infrequent or seasonal transportation by one farmer for another farmer, if their farms are located within twenty miles of each other, of products of the farm, orchard, or dairy, including livestock and plant or animal wastes, or of supplies or commodities to be used on the farm, orchard, or dairy;

(g) Motor vehicles when transporting exclusively water in connection with construction projects only;

(h) Motor vehicles of less than 8,000 pounds gross vehicle weight when transporting exclusively legal documents, pleadings, process, correspondence, depositions, briefs, medical records, photographs, books or papers, cash or checks, when moving shipments of the documents described at the direction of an attorney as part of providing legal services.

(2) The exemptions set forth in subsection (1)(a) and (b) of this section do not apply to household goods carriers. [2009 c 94 § 2; 1993 c 121 § 4; 1984 c 171 § 1; 1979 ex.s. c 6 § 1; 1963 c 59 § 7; 1961 c 14 § 81.80.040. Prior: 1957 c 205 § 4; 1949 c 133 § 1; 1947 c 263 § 1; 1937 c 166 § 4; 1935 c 184 § 3; Rem. Supp. 1949 § 6382-3.]

81.80.070 Common carriers, contract carriers, and temporary carriers—Permit required. (1) A common carrier, contract carrier, or temporary carrier shall not operate for the transportation of property for compensation in this state without first obtaining from the commission a permit for such operation.

(2) The commission shall issue a common carrier permit to any qualified applicant if it is found the applicant is fit, willing, and able to perform the service and conform to the provisions of this chapter and the rules and regulations of the commission.

(3) Before a permit is issued, the commission shall require the applicant to establish safety fitness and proof of minimum financial responsibility as provided in this chapter. [2009 c 94 § 3; 2007 c 234 § 72; 1999 c 79 § 1; 1963 c 242 § 1; 1961 c 14 § 81.80.070. Prior: 1953 c 95 § 17; 1947 c 264 § 2; 1941 c 163 § 1; 1937 c 166 § 6; 1935 c 184 § 5; Rem. Supp. 1947 § 6382-5.]

81.80.075 Household goods carriers—Permit required, penalty, cease and desist orders. (1) No person shall engage in business as a household goods carrier without first obtaining a household goods carrier permit from the commission.

(2) Permits issued to any household goods carrier must be exercised by the carrier to the fullest extent to render reasonable service to the public. Applications for household goods carrier permits or permit extensions must be on file for a period of at least thirty days before issuance unless the commission finds that special conditions require earlier issuance.

(3) The commission must issue a permit or permit extension to any qualified applicant, authorizing the whole or any part of the operations covered by the application, if it is found that: The applicant is fit, willing, and able to perform the services proposed and conform to this chapter and the requirements, rules, and regulations of the commission; the operations are consistent with the public interest; and, in the case of common carriers, they are required by the present or future public convenience and necessity; otherwise, the application must be denied.

(4) Any person who engages in business as a household goods carrier in violation of subsection (1) of this section is subject to a penalty of up to five thousand dollars per violation.

(a) If the basis for the violation is advertising, each advertisement reproduced, broadcast, or displayed via a particular medium constitutes a separate violation.

(b) In deciding the amount of penalty to be imposed per violation, the commission shall consider the following factors:

(i) The carrier's willingness to comply with the requirements of RCW 81.80.070 and the commission's rules under this chapter; and

(ii) The carrier's history with respect to compliance with this section.

(5) Any person who engages in business as a household goods carrier in violation of a cease and desist order issued by the commission under RCW 81.04.510 is subject to a penalty of up to ten thousand dollars per violation. [2009 c 94 § 4.]

81.80.280 Cancellation, suspension, and alteration of permits—Notice by household goods carriers. (1) Permits may be canceled, suspended, altered, or amended by the commission upon complaint by any interested party, or upon the commission's own motion after notice and opportunity for hearing, when the permittee or permittee's agent has repeatedly violated this chapter, the rules and regulations of the commission, or the motor laws of this state or of the United States, or the household goods carrier has made unlawful rebates or has not conducted its operation in accordance with the permit. The commission may enjoin any person from any violation of this chapter, or any order, rule, or regulation made by the commission pursuant to the terms hereof. If the suit is instituted by the commission, a bond is not required as a condition to the issuance of the injunction.

(2) When the commission has canceled a household goods carrier permit, the carrier must, when directed by the commission, provide notice to every customer that its permit has been canceled, and provide proof of such notice to the commission. [2009 c 94 § 7; 2007 c 234 § 85; 1987 c 209 § 1; 1961 c 14 § 81.80.280. Prior: 1935 c 184 § 24; RRS § 6382-24.]

81.80.357 Advertising—Household goods—Permit number required—Penalty. (1) No person in the business of transporting household goods as defined by the commission in intrastate commerce shall advertise without listing the carrier's Washington utilities and transportation commission permit number, physical address, and telephone number in the advertisement.

(2) All advertising, contracts, correspondence, cards, signs, posters, papers, and documents, including web sites or other online advertising, which show a household goods carrier name shall also show the carrier's Washington utilities

and transportation commission permit number, physical address, and telephone number. The alphabetized listing of household goods carriers appearing in the advertising sections of telephone books or other directories and all advertising that shows the carrier's name or address shall show the carrier's current Washington utilities and transportation commission permit number.

(3) Radio or television advertising need not contain the carrier's Washington utilities and transportation commission permit number if the carrier provides its permit number, physical address, and telephone number to the person selling the advertisement and it is recorded in the advertising contract.

(4) No person shall falsify a Washington utilities and transportation commission permit number or use a false or inaccurate Washington utilities and transportation commission permit number in connection with any solicitation or identification as an authorized household goods carrier.

(5) If, upon investigation, the commission determines that a household goods carrier or person acting in the capacity of a household goods carrier has violated this section, the commission may issue a penalty not to exceed five hundred dollars for every violation. [2009 c 94 § 6; 1994 c 168 § 1.]

81.80.372 Rights or privileges for compensatory services. This chapter does not confer on any person or persons the exclusive right or privilege of transporting property for compensation over the public highways of the state. [2009 c 94 § 5.]

81.80.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. ***(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 188.]

Chapter 81.84 RCW
COMMERCIAL FERRIES

Sections

81.84.010 Certificate of convenience and necessity required—Recreation exemption—Service initiation—Progress reports.

81.84.010 Certificate of convenience and necessity required—Recreation exemption—Service initiation—Progress reports. (1) A commercial ferry may not operate any vessel or ferry for the public use for hire between fixed termini or over a regular route upon the waters within this state, including the rivers and lakes and Puget Sound, without first applying for and obtaining from the commission a certificate declaring that public convenience and necessity require such operation. Service authorized by certificates issued to a commercial ferry operator must be exercised by the operator in a manner consistent with the conditions established in the certificate and tariff filed under chapter 81.28 RCW. However, a certificate is not required for a vessel primarily engaged in transporting freight other than vehicles, whose gross earnings from the transportation of passengers or vehicles, or both, are not more than ten percent of the total gross annual earnings of such vessel.

(2) If the commission finds, after a hearing, that an existing or a proposed commercial ferry service does not serve an essential transportation purpose and is solely for recreation, the commission may, by order, exempt that service from the requirements of certification and regulation under this chapter. If the nonessential service is a proposed service not already provided by an existing certificate holder, the commission must also find, after notice to any existing certificate holder operating within the same territory and an opportunity to be heard, that the proposed service would not adversely affect the rates or services of any existing certificate holder.

(3) This section does not affect the right of any county public transportation benefit area or other public agency within this state to construct, condemn, purchase, operate, or maintain, itself or by contract, agreement, or lease, with any person, firm, or corporation, ferries or boats across the waters within this state, including rivers and lakes and Puget Sound, if the operation is not over the same route or between the same districts being served by a certificate holder without first acquiring the rights granted to the certificate holder under the certificate.

(4) The holder of a certificate of public convenience and necessity granted under this chapter must initiate service within five years of obtaining the certificate, except that the holder of a certificate of public convenience and necessity for passenger-only ferry service in Puget Sound must initiate service within twenty months of obtaining the certificate. The certificate holder shall report to the commission every six months after the certificate is granted on the progress of the certificated route. The reports shall include, but not be limited to, the progress of environmental impact, parking, local government land use, docking, and financing considerations. Except in the case of passenger-only ferry service in Puget Sound, if service has not been initiated within five years of obtaining the certificate, the commission may extend the certificate on a twelve-month basis for up to three years if the six-month progress reports indicate there is significant advancement toward initiating service. [2009 c 557 § 2; 2007 c 234 § 92. Prior: 2003 c 373 § 4; 2003 c 83 § 211; 1993 c 427 § 2; 1961 c 14 § 81.84.010; prior: 1950 ex.s. c 6 § 1, part; 1927 c 248 § 1, part; RRS § 10361-1, part.]

Findings—Intent—2003 c 373: See note following RCW 47.64.090.

Findings—Intent—Captions, part headings not law—Severability—Effective date—2003 c 83: See notes following RCW 36.57A.200.

Chapter 81.104 RCW
HIGH CAPACITY TRANSPORTATION SYSTEMS

Sections

81.104.015 Definitions.
81.104.150 Employer tax.
81.104.160 Sales and use tax on car rentals—Motor vehicle excise tax repealed.
81.104.170 Sales and use tax.
81.104.180 Pledge of revenues for bond retirement.
81.104.190 Contract for collection of taxes.
81.104.200 High capacity transportation corridor areas.
81.104.210 High capacity transportation corridor areas—Issuance of bonds.

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

(1) "High capacity transportation corridor area" means a quasi-municipal corporation and independent taxing authority within the meaning of Article VII, section 1 of the state Constitution, and a taxing district within the meaning of Article VII, section 2 of the state Constitution, created by a transit agency governing body.

(2) "High capacity transportation system" means a system of public transportation services within an urbanized region operating principally on exclusive rights-of-way, and the supporting services and facilities necessary to implement such a system, including interim express services and high occupancy vehicle lanes, which taken as a whole, provides a substantially higher level of passenger capacity, speed, and service frequency than traditional public transportation systems operating principally in general purpose roadways.

(3) "Rail fixed guideway system" means a light, heavy, or rapid rail system, monorail, inclined plane, funicular, trolley, or other fixed rail guideway component of a high capacity transportation system that is not regulated by the Federal Railroad Administration, or its successor. "Rail fixed guideway system" does not mean elevators, moving sidewalks or stairs, and vehicles suspended from aerial cables, unless they are an integral component of a station served by a rail fixed guideway system.

(4) "Regional transit system" means a high capacity transportation system under the jurisdiction of one or more transit agencies except where a regional transit authority created under chapter 81.112 RCW exists, in which case "regional transit system" means the high capacity transportation system under the jurisdiction of a regional transit authority.

(5) "Transit agency" means city-owned transit systems, county transportation authorities, metropolitan municipal corporations, and public transportation benefit areas. [2009 c 280 § 1; 1999 c 202 § 9; 1992 c 101 § 19.]

Effective date—1999 c 202: See note following RCW 35.21.228.

81.104.150 Employer tax. Cities that operate transit systems, county transportation authorities, metropolitan municipal corporations, public transportation benefit areas, high capacity transportation corridor areas, and regional transit authorities may submit an authorizing proposition to the voters and if approved may impose an excise tax of up to two dollars per month per employee on all employers located within the applicable jurisdiction, measured by the number of full-time equivalent employees, solely for the purpose of providing high capacity transportation service. The rate of tax shall be approved by the voters. This tax may not be imposed by: (1) A transit agency or high capacity transportation corridor area when the county within which it is located is imposing an excise tax pursuant to RCW 81.100.030; or (2) a regional transit authority when any county within the authority's boundaries is imposing an excise tax pursuant to RCW 81.100.030. The agency or high capacity transportation corridor area imposing the tax authorized in this section may provide for exemptions from the tax to such educational, cultural, health, charitable, or religious organizations as it deems appropriate. [2009 c 280 § 3; 1992 c 101 § 26; 1990 c 43 § 41.]

81.104.160 Sales and use tax on car rentals—Motor vehicle excise tax repealed. An agency and high capacity transportation corridor area may impose a sales and use tax solely for the purpose of providing high capacity transportation service, in addition to the tax authorized by RCW 82.14.030, upon retail car rentals within the applicable jurisdiction that are taxable by the state under chapters 82.08 and 82.12 RCW. The rate of tax shall not exceed 2.172 percent. The base of the tax shall be the selling price in the case of a sales tax or the rental value of the vehicle used in the case of a use tax.

Any motor vehicle excise tax previously imposed under the provisions of RCW 81.104.160(1) shall be repealed, terminated and expire on December 5, 2002. [2009 c 280 § 4; 2003 c 1 § 6 (Initiative Measure No. 776, approved November 5, 2002); 1998 c 321 § 35 (Referendum Bill No. 49, approved November 3, 1998). Prior: 1992 c 194 § 13; 1992 c 101 § 27; 1991 c 318 § 12; 1990 c 43 § 42.]

Reviser's note: In *Pierce County v. State,* 159 Wn.2d 16 (2006), the supreme court held that section 6, chapter 1, Laws of 2003 (Initiative Measure No. 776) impermissibly impairs the contractual obligations between Sound Transit and its bondholders in violation of the contract clause and, as a result, has no legal effect of preventing Sound Transit from continuing to fulfill its contractual obligation to levy the motor vehicle excise tax for so long as the bonds remain outstanding.

Severability—Savings—2003 c 1 (Initiative Measure No. 776): "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. If the repeal of taxes in section 6 of this act is judicially held to impair any contract in existence as of the effective date of this act, the repeal shall apply to any other contract, including novation, renewal, or refunding (in the case of bond contract)." [2003 c 1 § 10 (Initiative Measure No. 776, approved November 5, 2002).]

Repeal of taxes by 2003 c 1 § 6 (Initiative Measure No. 776): "If the repeal of taxes in section 6 of this act affects any bonds previously issued for any purpose relating to light rail, the people expect transit agencies to retire these bonds using reserve funds including accrued interest, sale of property or equipment, new voter approved tax revenues, or any combination of these sources of revenue. Taxing districts should abstain from further bond sales for any purpose relating to light rail until voters decide this measure. The people encourage transit agencies to put another tax revenue measure before voters if they want to continue with a light rail system dramatically changed from that previously represented to and approved by voters." [2003 c 1 § 7 (Initiative Measure No. 776, approved November 5, 2002).]

Construction—Intent—2003 c 1 (Initiative Measure No. 776): See notes following RCW 46.16.0621.

Purpose—Severability—1998 c 321: See notes following RCW 82.14.045.

Contingent effective dates—1998 c 321 §§ 23-42: See note following RCW 35.58.410.

Legislative intent—1992 c 194: See note following RCW 82.08.020.

Effective dates—1992 c 194: See note following RCW 46.04.466.

81.104.170 Sales and use tax. (1) Cities that operate transit systems, county transportation authorities, metropolitan municipal corporations, public transportation benefit areas, high capacity transportation corridor areas, and regional transit authorities may submit an authorizing proposition to the voters and if approved by a majority of persons voting, fix and impose a sales and use tax in accordance with the terms of this chapter, solely for the purpose of providing high capacity transportation service.

(2) The tax authorized pursuant to this section shall be in addition to the tax authorized by RCW 82.14.030 and shall be collected from those persons who are taxable by the state pursuant to chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the taxing district. The maximum rate of such tax shall be approved by the voters and shall not exceed one percent of the selling price (in the case of a sales tax) or value of the article used (in the case of a use tax). The maximum rate of such tax that may be imposed shall not exceed nine-tenths of one percent in any county that imposes a tax under RCW 82.14.340, or within a regional transit authority if any county within the authority imposes a tax under RCW 82.14.340.

(3)(a) The exemptions in RCW 82.08.820 and 82.12.820 are for the state portion of the sales and use tax and do not extend to the tax authorized in this section.

(b) The exemptions in RCW 82.08.962 and 82.12.962 are for the state and local sales and use taxes and include the tax authorized by this section. [2009 c 469 § 106; 2009 c 280 § 5; 1997 c 450 § 5; 1992 c 101 § 28; 1990 2nd ex.s. c 1 § 902; 1990 c 43 § 43.]

Reviser's note: This section was amended by 2009 c 280 § 5 and by 2009 c 469 § 106, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2009 c 469: See note following RCW 82.08.962.

Findings—Intent—Report—Effective date—1997 c 450: See notes following RCW 82.08.820.

Severability—1990 2nd ex.s. c 1: See note following RCW 82.14.300.

Changes in tax law—Liability: RCW 82.08.064, 82.14.055, and 82.32.430.

Local retail sales and use taxes: Chapter 82.14 RCW.

Sales tax imposed—Retail sales—Retail car rental: RCW 82.08.020.

Use tax imposed: RCW 82.12.020.

81.104.180 Pledge of revenues for bond retirement. Cities that operate transit systems, county transportation authorities, metropolitan municipal corporations, public transportation benefit areas, high capacity transportation corridor areas, and regional transit authorities are authorized to pledge revenues from the employer tax authorized by RCW 81.104.150, the taxes authorized by RCW 81.104.160, and the sales and use tax authorized by RCW 81.104.170, to retire bonds issued solely for the purpose of providing high capacity transportation service. [2009 c 280 § 6; 1992 c 101 § 29; 1990 c 43 § 44.]

81.104.190 Contract for collection of taxes. Cities that operate transit systems, county transportation authorities, metropolitan municipal corporations, public transportation benefit areas, high capacity transportation corridor areas, and regional transit systems may contract with the state department of revenue or other appropriate entities for administration and collection of any tax authorized by RCW 81.104.150, 81.104.160, and 81.104.170. [2009 c 280 § 7; 1992 c 101 § 30; 1990 c 43 § 45.]

81.104.200 High capacity transportation corridor areas. (1) A governing body of a transit agency in a county that has a population of more than four hundred thousand and that adjoins a state boundary may establish one or more high capacity transportation corridor areas within all or a portion of the boundaries of the transit agency establishing the high capacity transportation corridor area. A high capacity transportation corridor area may include all or a portion of a city or town as long as all or a portion of the city or town boundaries are within the boundaries of the establishing transit agency. The members of the transit agency governing body proposing to establish the high capacity transportation corridor area, acting ex officio and independently, shall constitute the governing body of the high capacity transportation corridor area.

(2) A high capacity transportation corridor area may establish, finance, and provide a high capacity transportation system within its boundaries in the same manner as authorized for transit agencies under this chapter, subject to the following restrictions:

(a) Any combined tax rates imposed under this chapter within the boundaries of the transit agency establishing a high capacity transportation corridor area or areas may not exceed the maximum rates authorized under RCW 81.104.150, 81.104.160, and 81.104.170;

(b) If a majority of the voters within the boundaries of a high capacity transportation corridor area approve a proposition imposing any high capacity transportation taxes, the governing body of the high capacity transportation corridor area may not seek subsequent voter approval of any additional high capacity transportation taxes, notwithstanding any remaining authorized taxing capacity; and

(c) The governing body of a high capacity transportation corridor area may not submit any authorizing proposition for voter-approved taxes prior to July 1, 2012.

(3) A high capacity transportation corridor area constitutes a body corporate and possesses all the usual powers of a corporation for public purposes as well as all other powers that may be conferred by statute including, but not limited to, the authority to hire employees, staff, and services, to enter into contracts, to acquire, hold, and dispose of real and personal property, and to sue and be sued. Public works contract limits applicable to the transit agency that established the high capacity transportation corridor area apply to the area.

(4) A high capacity transportation corridor area may exercise the power of eminent domain to obtain property for its authorized purposes in the same manner as authorized for the transit agency that established the area.

(5) A high capacity transportation corridor area may be dissolved by a majority vote of the governing body when all obligations under any general obligation bonds issued by the high capacity transportation corridor area have been discharged and any other contractual obligations of the high capacity transportation corridor area have either been dis-

charged or assumed by another governmental entity. [2009 c 280 § 2.]

81.104.210 High capacity transportation corridor areas—Issuance of bonds. (1) To carry out the purposes of this chapter, a high capacity transportation corridor area may issue general obligation bonds, not to exceed an amount, together with any other outstanding nonvoter-approved general obligation indebtedness, equal to one and one-half percent of the value of the taxable property within the area, as the term "value of the taxable property" is defined in RCW 39.36.015. A high capacity transportation corridor area may also issue general obligation bonds for capital purposes only, together with any outstanding general obligation indebtedness, not to exceed an amount equal to five percent of the value of the taxable property within the area, as the term "value of the taxable property" is defined in RCW 39.36.015, when authorized by the voters of the area pursuant to Article VIII, section 6 of the state Constitution.

(2) General obligation bonds with a maturity in excess of twenty-five years shall not be issued. The governing body of the high capacity transportation corridor area shall by resolution determine for each general obligation bond issue the amount, date, terms, conditions, denominations, maximum fixed or variable interest rate or rates, maturity or maturities, redemption rights, registration privileges, manner of execution, manner of sale, callable provisions, if any, covenants, and form, including registration as to principal and interest, registration as to principal only, or bearer. Registration may include, but not be limited to: (a) A book entry system of recording the ownership of a bond whether or not physical bonds are issued; or (b) recording the ownership of a bond together with the requirement that the transfer of ownership may only be effected by the surrender of the old bond and either the reissuance of the old bond or the issuance of a new bond to the new owner. Facsimile signatures may be used on the bonds and any coupons. Refunding general obligation bonds may be issued in the same manner as general obligation bonds are issued.

(3) Whenever general obligation bonds are issued to fund specific projects or enterprises that generate revenues, charges, user fees, or special assessments, the high capacity transportation corridor area may specifically pledge all or a portion of the revenues, charges, user fees, or special assessments to refund the general obligation bonds. The high capacity transportation corridor area may also pledge any other revenues that may be available to the area.

(4) In addition to general obligation bonds, a high capacity transportation corridor area may issue revenue bonds to be issued and sold in accordance with chapter 39.46 RCW. [2009 c 280 § 8.]

Chapter 81.112 RCW
REGIONAL TRANSIT AUTHORITIES

Sections

81.112.020 Definitions.
81.112.210 Fare payment—Fines and penalties established—Enforcement.
81.112.220 Fare payment—Proof of payment—Civil infractions.
81.112.230 Fare payment—Prosecution for theft, trespass, or other charges.
81.112.235 Power conferred is supplemental.

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

(1) "Authority" means a regional transit authority authorized under this chapter.

(2) "Board" means the board of a regional transit authority.

(3) "Facilities" means any lands, interest in land, air rights over lands, and improvements thereto including vessel terminals, and any equipment, vehicles, vessels, trains, stations, designated passenger waiting areas, and other components necessary to support the system.

(4) "Proof of payment" means evidence of fare prepayment authorized by a regional transit authority for the use of its facilities.

(5) "Service area" or "area" means the area included within the boundaries of a regional transit authority.

(6) "System" means a regional transit system authorized under this chapter and under the jurisdiction of a regional transit authority. [2009 c 279 § 4; 1999 c 20 § 2; 1992 c 101 § 2.]

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

Purpose—Intent—1999 c 20: See note following RCW 81.112.210.

81.112.210 Fare payment—Fines and penalties established—Enforcement. (1) An authority is authorized to establish, by resolution, a schedule of fines and penalties for civil infractions established in RCW 81.112.220. Fines established by a regional transit authority shall not exceed those imposed for class 1 infractions under RCW 7.80.120.

(2)(a) A regional transit authority may designate persons to monitor fare payment who are equivalent to and are authorized to exercise all the powers of an enforcement officer, defined in RCW 7.80.040. An authority is authorized to employ personnel to either monitor fare payment, or to contract for such services, or both.

(b) In addition to the specific powers granted to enforcement officers under RCW 7.80.050 and 7.80.060, persons designated to monitor fare payment also have the authority to take the following actions:

(i) Request proof of payment from passengers;

(ii) Request personal identification from a passenger who does not produce proof of payment when requested;

(iii) Issue a citation conforming to the requirements established in RCW 7.80.070; and

(iv) Request that a passenger leave the regional transit authority facility when the passenger has not produced proof of payment after being asked to do so by a person designated to monitor fare payment.

(3) Regional transit authorities shall keep records of citations in the manner prescribed by RCW 7.80.150. All civil infractions established by chapter 20, Laws of 1999 shall be heard and determined by a district or municipal court as provided in RCW 7.80.010 (1), (2), and (4). [2009 c 279 § 5; 1999 c 20 § 3.]

Purpose—Intent—1999 c 20: "The purpose of this act is to facilitate ease of boarding of commuter trains and light rail trains operated by regional transit authorities by allowing for barrier free entry ways. This act provides regional transit authorities with the power to require proof of payment; to set a schedule of fines and penalties not to exceed those classified as class 1 infractions under RCW 7.80.120; to employ individuals to monitor fare payment or contract for such services; to issue citations for fare nonpayment or related activities; and to keep records regarding citations issued for the purpose of tracking violations and issuing citations consistent with established schedules. This act is intended to be consistent with and implemented pursuant to chapter 7.80 RCW with regard to civil infractions, the issuance of citations, and the maintenance of citation records." [1999 c 20 § 1.]

81.112.220 Fare payment—Proof of payment—Civil infractions. (1) Persons traveling on facilities operated by an authority shall pay the fare established by the authority. Such persons shall produce proof of payment when requested by a person designated to monitor fare payment.

(2) The following constitute civil infractions punishable according to the schedule of fines and penalties established by the authority under RCW 81.112.210(1):

(a) Failure to pay the required fare;

(b) Failure to display proof of payment when requested to do so by a person designated to monitor fare payment; and

(c) Failure to depart the facility when requested to do so by a person designated to monitor fare payment. [2009 c 279 § 6; 1999 c 20 § 4.]

Purpose—Intent—1999 c 20: See note following RCW 81.112.210.

81.112.230 Fare payment—Prosecution for theft, trespass, or other charges. Nothing in RCW 81.112.020 and 81.112.210 through 81.112.230 shall be deemed to prevent law enforcement authorities from prosecuting for theft, trespass, or other charges by any individual who:

(1) Fails to pay the required fare on more than one occasion within a twelve-month period;

(2) Fails to timely select one of the options for responding to the notice of civil infraction after receiving a statement of the options provided in this chapter for responding to the notice of infraction and the procedures necessary to exercise these options; or

(3) Fails to depart the facility when requested to do so by a person designated to monitor fare payment. [2009 c 279 § 7; 2006 c 270 § 12; 1999 c 20 § 5.]

Purpose—Intent—1999 c 20: See note following RCW 81.112.210.

81.112.235 Power conferred is supplemental. The powers and authority conferred by RCW 81.112.210 through 81.112.230 are in addition and supplemental to powers or authority conferred by any other law. RCW 81.112.210 through 81.112.230 do not limit any other powers or authority of a regional transit authority. [2009 c 279 § 8.]

Title 82

EXCISE TAXES

Chapters

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Chapter 82.02 RCW
GENERAL PROVISIONS

Sections

82.02.020 State preempts certain tax fields—Fees prohibited for the development of land or buildings—Voluntary payments by developers authorized—Limitations—Exceptions.
82.02.070 Impact fees—Retained in special accounts—Limitations on use—Administrative appeals.
82.02.110 Impact fees—Extending use of school impact fees.
82.02.230 One statewide rate and one jurisdiction-wide rate for sales and use taxes.

82.02.020 State preempts certain tax fields—Fees prohibited for the development of land or buildings—Voluntary payments by developers authorized—Limitations—Exceptions. Except only as expressly provided in chapters 67.28, 81.104, and 82.14 RCW, the state preempts the field of imposing retail sales and use taxes and taxes upon parimutuel wagering authorized pursuant to RCW 67.16.060, conveyances, and cigarettes, and no county, town, or other municipal subdivision shall have the right to impose taxes of that nature. Except as provided in RCW 64.34.440 and 82.02.050 through 82.02.090, no county, city, town, or other municipal corporation shall impose any tax, fee, or charge, either direct or indirect, on the construction or reconstruction of residential buildings, commercial buildings, industrial buildings, or on any other building or building space or appurtenance thereto, or on the development, subdivision, classification, or reclassification of land. However, this section does not preclude dedications of land or easements within the proposed development or plat which the county, city, town, or other municipal corporation can demonstrate are reasonably necessary as a direct result of the proposed development or plat to which the dedication of land or easement is to apply.

This section does not prohibit voluntary agreements with counties, cities, towns, or other municipal corporations that allow a payment in lieu of a dedication of land or to mitigate a direct impact that has been identified as a consequence of a proposed development, subdivision, or plat. A local government shall not use such voluntary agreements for local offsite transportation improvements within the geographic boundaries of the area or areas covered by an adopted transportation program authorized by chapter 39.92 RCW. Any

such voluntary agreement is subject to the following provisions:

(1) The payment shall be held in a reserve account and may only be expended to fund a capital improvement agreed upon by the parties to mitigate the identified, direct impact;

(2) The payment shall be expended in all cases within five years of collection; and

(3) Any payment not so expended shall be refunded with interest to be calculated from the original date the deposit was received by the county and at the same rate applied to tax refunds pursuant to RCW 84.69.100; however, if the payment is not expended within five years due to delay attributable to the developer, the payment shall be refunded without interest.

No county, city, town, or other municipal corporation shall require any payment as part of such a voluntary agreement which the county, city, town, or other municipal corporation cannot establish is reasonably necessary as a direct result of the proposed development or plat.

Nothing in this section prohibits cities, towns, counties, or other municipal corporations from collecting reasonable fees from an applicant for a permit or other governmental approval to cover the cost to the city, town, county, or other municipal corporation of processing applications, inspecting and reviewing plans, or preparing detailed statements required by chapter 43.21C RCW.

This section does not limit the existing authority of any county, city, town, or other municipal corporation to impose special assessments on property specifically benefitted thereby in the manner prescribed by law.

Nothing in this section prohibits counties, cities, or towns from imposing or permits counties, cities, or towns to impose water, sewer, natural gas, drainage utility, and drainage system charges. However, no such charge shall exceed the proportionate share of such utility or system's capital costs which the county, city, or town can demonstrate are attributable to the property being charged. Furthermore, these provisions may not be interpreted to expand or contract any existing authority of counties, cities, or towns to impose such charges.

Nothing in this section prohibits a transportation benefit district from imposing fees or charges authorized in RCW 36.73.120 nor prohibits the legislative authority of a county, city, or town from approving the imposition of such fees within a transportation benefit district.

Nothing in this section prohibits counties, cities, or towns from imposing transportation impact fees authorized pursuant to chapter 39.92 RCW.

Nothing in this section prohibits counties, cities, or towns from requiring property owners to provide relocation assistance to tenants under RCW 59.18.440 and 59.18.450.

Nothing in this section limits the authority of counties, cities, or towns to implement programs consistent with RCW 36.70A.540, nor to enforce agreements made pursuant to such programs.

This section does not apply to special purpose districts formed and acting pursuant to Title 54, 57, or 87 RCW, nor is the authority conferred by these titles affected. [2009 c 535 § 1103; 2008 c 113 § 2; 2006 c 149 § 3; 2005 c 502 § 5; 1997 c 452 § 21; 1996 c 230 § 1612; 1990 1st ex.s. c 17 § 42; 1988 c 179 § 6; 1987 c 327 § 17; 1982 1st ex.s. c 49 § 5; 1979 ex.s. c 196 § 3; 1970 ex.s. c 94 § 8; 1967 c 236 § 16; 1961 c 15 § 82.02.020. Prior: (i) 1935 c 180 § 29; RRS § 8370-29. (ii) 1949 c 228 § 28; 1939 c 225 § 22; 1937 c 227 § 24; Rem. Supp. 1949 § 8370-219. Formerly RCW 82.32.370.]

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Application—Effective date—2008 c 113: See notes following RCW 64.34.440.

Findings—Construction—2006 c 149: See notes following RCW 36.70A.540.

Effective date—2005 c 502: See note following RCW 1.12.070.

Intent—Severability—1997 c 452: See notes following RCW 67.28.080.

Savings—1997 c 452: See note following RCW 67.28.181.

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

Severability—Prospective application—Section captions—1988 c 179: See RCW 39.92.900 and 39.92.901.

Intent—Construction—Effective date—Fire district funding—1982 1st ex.s. c 49: See notes following RCW 35.21.710.

Effective date—1979 ex.s. c 196: See note following RCW 82.04.240.

Severability—1970 ex.s. c 94: See RCW 82.14.900.

82.02.070 Impact fees—Retained in special accounts—Limitations on use—Administrative appeals. (1) Impact fee receipts shall be earmarked specifically and retained in special interest-bearing accounts. Separate accounts shall be established for each type of public facility for which impact fees are collected. All interest shall be retained in the account and expended for the purpose or purposes for which the impact fees were imposed. Annually, each county, city, or town imposing impact fees shall provide a report on each impact fee account showing the source and amount of all moneys collected, earned, or received and system improvements that were financed in whole or in part by impact fees.

(2) Impact fees for system improvements shall be expended only in conformance with the capital facilities plan element of the comprehensive plan.

(3)(a) Except as provided otherwise by (b) of this subsection, impact fees shall be expended or encumbered for a permissible use within six years of receipt, unless there exists an extraordinary and compelling reason for fees to be held longer than six years. Such extraordinary or compelling reasons shall be identified in written findings by the governing body of the county, city, or town.

(b) School impact fees must be expended or encumbered for a permissible use within ten years of receipt, unless there exists an extraordinary and compelling reason for fees to be held longer than ten years. Such extraordinary or compelling reasons shall be identified in written findings by the governing body of the county, city, or town.

(4) Impact fees may be paid under protest in order to obtain a permit or other approval of development activity.

(5) Each county, city, or town that imposes impact fees shall provide for an administrative appeals process for the appeal of an impact fee; the process may follow the appeal process for the underlying development approval or the county, city, or town may establish a separate appeals process. The impact fee may be modified upon a determination

that it is proper to do so based on principles of fairness. The county, city, or town may provide for the resolution of disputes regarding impact fees by arbitration. [2009 c 263 § 1; 1990 1st ex.s. c 17 § 46.]

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

82.02.110 Impact fees—Extending use of school impact fees. Criteria must be developed by the office of the superintendent of public instruction for extending the use of school impact fees from six to ten years and this extension must require an evaluation for each respective school board of the appropriateness of the extension. [2009 c 263 § 2.]

82.02.230 One statewide rate and one jurisdiction-wide rate for sales and use taxes. (1) There shall be one statewide rate for sales and use taxes imposed at the state level. This subsection does not apply to the taxes imposed by RCW 82.08.150, 82.12.022, or 82.18.020, or to taxes imposed on the sale, rental, lease, or use of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile homes.

(2) There shall be one jurisdiction-wide rate for local sales and use taxes imposed at levels below the state level. This subsection does not apply to the taxes imposed by chapter 67.28 RCW, RCW 35.21.280, 36.38.010, 36.38.040, 67.40.090, 82.80.030, or 82.14.360, or to taxes imposed on the sale, rental, lease, or use of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile homes. [2009 c 289 § 3; 2004 c 153 § 405; 2003 c 168 § 801.]

Retroactive effective date—Effective date—2004 c 153: See note following RCW 82.08.0293.

Effective dates—Part headings not law—2003 c 168: See notes following RCW 82.08.010.

Chapter 82.04 RCW
BUSINESS AND OCCUPATION TAX

Sections

82.04.050 "Sale at retail," "retail sale." *(Effective until January 1, 2010.)*
82.04.050 "Sale at retail," "retail sale." *(Effective January 1, 2010.)*
82.04.060 "Sale at wholesale," "wholesale sale."
82.04.065 Telephone, telecommunications, and ancillary services—Definitions.
82.04.070 "Gross proceeds of sales."
82.04.110 "Manufacturer."
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82.04.257 Tax on digital products and services.
82.04.258 Digital products—Apportionable income.
82.04.260 Tax on manufacturers and processors of various foods and by-products—Research and development organizations—Travel agents—Certain international activities—Stevedoring and associated activities—Low-level waste disposers—Insurance producers, surplus line brokers, and title insurance agents—Hospitals—Commercial airplane activities—Timber product activities—Canned salmon processors.
82.04.263 Tax on cleaning up radioactive waste and other by-products of weapons production and nuclear research and development.
82.04.280 Tax on printers, publishers, highway contractors, extracting or processing for hire, cold storage warehouse or storage warehouse operation, insurance general agents, radio and television broadcasting, government contractors—Cold storage warehouse defined—Storage warehouse defined—Periodical or magazine defined. *(Contingent expiration date.)*
82.04.280 Tax on printers, publishers, highway contractors, extracting or processing for hire, cold storage warehouse or storage warehouse operation, insurance general agents, radio and television broadcasting, government contractors—Cold storage warehouse defined—Storage warehouse defined—Periodical or magazine defined. *(Contingent effective date.)*
82.04.2907 Tax on royalties from granting intangible rights.
82.04.294 Tax on manufacturers or wholesalers of solar energy systems. *(Expires June 30, 2014.)*
82.04.297 Internet access—Definitions.
82.04.363 Exemptions—Camp or conference center—Items sold or furnished by nonprofit organization.
82.04.4282 Deductions—Fees, dues, charges.
82.04.433 Deductions—Sales of fuel for consumption outside United States' waters by vessels in foreign commerce.
82.04.44525 Credit—New employment for international service activities in eligible areas—Designation of census tracts for eligibility—Records—Tax due upon ineligibility—Interest assessment—Information from employment security department.
82.04.449 Credit—Washington customized employment training program.
82.04.4494 Credit—Forest derived biomass. *(Expires June 30, 2015.)*
82.04.470 Resale certificate—Burden of proof—Tax liability—Rules—Resale certificate defined *(as amended by 2009 c 535)*.
82.04.470 Seller's permit—Burden of proof—Tax liability—Rules—Seller's permit defined *(as amended by 2009 c 563)*. *(Effective January 1, 2010.)*
82.04.480 Sales in own name—Sales as agent.
82.04.635 Exemptions—Nonprofits providing legal services to low-income persons.

82.04.050 "Sale at retail," "retail sale." *(Effective until January 1, 2010.)* (1) "Sale at retail" or "retail sale" means every sale of tangible personal property (including articles produced, fabricated, or imprinted) to all persons irrespective of the nature of their business and including, among others, without limiting the scope hereof, persons who install, repair, clean, alter, improve, construct, or decorate real or personal property of or for consumers other than a sale to a person who presents a resale certificate under RCW 82.04.470 and who:

(a) Purchases for the purpose of resale as tangible personal property in the regular course of business without intervening use by such person, but a purchase for the purpose of resale by a regional transit authority under RCW 81.112.300 is not a sale for resale; or

(b) Installs, repairs, cleans, alters, imprints, improves, constructs, or decorates real or personal property of or for consumers, if such tangible personal property becomes an ingredient or component of such real or personal property without intervening use by such person; or

(c) Purchases for the purpose of consuming the property purchased in producing for sale a new article of tangible personal property or substance, of which such property becomes an ingredient or component or is a chemical used in processing, when the primary purpose of such chemical is to create a chemical reaction directly through contact with an ingredient of a new article being produced for sale; or

(d) Purchases for the purpose of consuming the property purchased in producing ferrosilicon which is subsequently used in producing magnesium for sale, if the primary purpose of such property is to create a chemical reaction directly through contact with an ingredient of ferrosilicon; or

(e) Purchases for the purpose of providing the property to consumers as part of competitive telephone service, as

defined in RCW 82.04.065. The term shall include every sale of tangible personal property which is used or consumed or to be used or consumed in the performance of any activity classified as a "sale at retail" or "retail sale" even though such property is resold or utilized as provided in (a), (b), (c), (d), or (e) of this subsection following such use. The term also means every sale of tangible personal property to persons engaged in any business which is taxable under RCW 82.04.280 (2) and (7), 82.04.290, and 82.04.2908; or

(f) Purchases for the purpose of satisfying the person's obligations under an extended warranty as defined in subsection (7) of this section, if such tangible personal property replaces or becomes an ingredient or component of property covered by the extended warranty without intervening use by such person.

(2) The term "sale at retail" or "retail sale" includes the sale of or charge made for tangible personal property consumed and/or for labor and services rendered in respect to the following:

(a) The installing, repairing, cleaning, altering, imprinting, or improving of tangible personal property of or for consumers, including charges made for the mere use of facilities in respect thereto, but excluding charges made for the use of self-service laundry facilities, and also excluding sales of laundry service to nonprofit health care facilities, and excluding services rendered in respect to live animals, birds and insects;

(b) The constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for consumers, including the installing or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation, and shall also include the sale of services or charges made for the clearing of land and the moving of earth excepting the mere leveling of land used in commercial farming or agriculture;

(c) The constructing, repairing, or improving of any structure upon, above, or under any real property owned by an owner who conveys the property by title, possession, or any other means to the person performing such construction, repair, or improvement for the purpose of performing such construction, repair, or improvement and the property is then reconveyed by title, possession, or any other means to the original owner;

(d) The cleaning, fumigating, razing, or moving of existing buildings or structures, but may not include the charge made for janitorial services; and for purposes of this section the term "janitorial services" shall mean those cleaning and caretaking services ordinarily performed by commercial janitor service businesses including, but not limited to, wall and window washing, floor cleaning and waxing, and the cleaning in place of rugs, drapes and upholstery. The term "janitorial services" does not include painting, papering, repairing, furnace or septic tank cleaning, snow removal or sandblasting;

(e) Automobile towing and similar automotive transportation services, but not in respect to those required to report and pay taxes under chapter 82.16 RCW;

(f) The furnishing of lodging and all other services by a hotel, rooming house, tourist court, motel, trailer camp, and the granting of any similar license to use real property, as distinguished from the renting or leasing of real property, and it is presumed that the occupancy of real property for a continuous period of one month or more constitutes a rental or lease of real property and not a mere license to use or enjoy the same. For the purposes of this subsection, it shall be presumed that the sale of and charge made for the furnishing of lodging for a continuous period of one month or more to a person is a rental or lease of real property and not a mere license to enjoy the same;

(g) The installing, repairing, altering, or improving of digital goods for consumers;

(h) Persons taxable under (a), (b), (c), (d), (e), (f), and (g) of this subsection when such sales or charges are for property, labor and services which are used or consumed in whole or in part by such persons in the performance of any activity defined as a "sale at retail" or "retail sale" even though such property, labor and services may be resold after such use or consumption. Nothing contained in this subsection shall be construed to modify subsection (1) of this section and nothing contained in subsection (1) of this section may be construed to modify this subsection.

(3) The term "sale at retail" or "retail sale" includes the sale of or charge made for personal, business, or professional services including amounts designated as interest, rents, fees, admission, and other service emoluments however designated, received by persons engaging in the following business activities:

(a) Amusement and recreation services including but not limited to golf, pool, billiards, skating, bowling, ski lifts and tows, day trips for sightseeing purposes, and others, when provided to consumers;

(b) Abstract, title insurance, and escrow services;

(c) Credit bureau services;

(d) Automobile parking and storage garage services;

(e) Landscape maintenance and horticultural services but excluding (i) horticultural services provided to farmers and (ii) pruning, trimming, repairing, removing, and clearing of trees and brush near electric transmission or distribution lines or equipment, if performed by or at the direction of an electric utility;

(f) Service charges associated with tickets to professional sporting events; and

(g) The following personal services: Physical fitness services, tanning salon services, tattoo parlor services, steam bath services, turkish bath services, escort services, and dating services.

(4)(a) The term also includes:

(i) The renting or leasing of tangible personal property to consumers; and

(ii) Providing tangible personal property along with an operator for a fixed or indeterminate period of time. A consideration of this is that the operator is necessary for the tangible personal property to perform as designed. For the purpose of this subsection (4)(a)(ii), an operator must do more than maintain, inspect, or set up the tangible personal property.

(b) The term does not include the renting or leasing of tangible personal property where the lease or rental is for the purpose of sublease or subrent.

(5) The term also includes the providing of "competitive telephone service," "telecommunications service," or "ancillary services," as those terms are defined in RCW 82.04.065, to consumers.

(6)(a) The term also includes the sale of prewritten computer software other than a sale to a person who presents a resale certificate under RCW 82.04.470, regardless of the method of delivery to the end user. For purposes of this subsection (6)(a), the sale of prewritten computer software includes the sale of or charge made for a key or an enabling or activation code, where the key or code is required to activate prewritten computer software and put the software into use. There is no separate sale of the key or code from the prewritten computer software, regardless of how the sale may be characterized by the vendor or by the purchaser.

The term "retail sale" does not include the sale of or charge made for:

(i) Custom software; or

(ii) The customization of prewritten computer software.

(b) The term also includes the charge made to consumers for the right to access and use prewritten computer software, where possession of the software is maintained by the seller or a third party, regardless of whether the charge for the service is on a per use, per user, per license, subscription, or some other basis.

(7) The term also includes the sale of or charge made for an extended warranty to a consumer. For purposes of this subsection, "extended warranty" means an agreement for a specified duration to perform the replacement or repair of tangible personal property at no additional charge or a reduced charge for tangible personal property, labor, or both, or to provide indemnification for the replacement or repair of tangible personal property, based on the occurrence of specified events. The term "extended warranty" does not include an agreement, otherwise meeting the definition of extended warranty in this subsection, if no separate charge is made for the agreement and the value of the agreement is included in the sales price of the tangible personal property covered by the agreement. For purposes of this subsection, "sales price" has the same meaning as in RCW 82.08.010.

(8)(a) The term also includes the following sales to consumers of digital goods, digital codes, and digital automated services:

(i) Sales in which the seller has granted the purchaser the right of permanent use;

(ii) Sales in which the seller has granted the purchaser a right of use that is less than permanent;

(iii) Sales in which the purchaser is not obligated to make continued payment as a condition of the sale; and

(iv) Sales in which the purchaser is obligated to make continued payment as a condition of the sale.

(b) A retail sale of digital goods, digital codes, or digital automated services under this subsection (8) includes any services provided by the seller exclusively in connection with the digital goods, digital codes, or digital automated services, whether or not a separate charge is made for such services.

(c) For purposes of this subsection, "permanent" means perpetual or for an indefinite or unspecified length of time. A right of permanent use is presumed to have been granted unless the agreement between the seller and the purchaser specifies or the circumstances surrounding the transaction suggest or indicate that the right to use terminates on the occurrence of a condition subsequent.

(9) The term does not include the sale of or charge made for labor and services rendered in respect to the building, repairing, or improving of any street, place, road, highway, easement, right-of-way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state or by the United States and which is used or to be used primarily for foot or vehicular traffic including mass transportation vehicles of any kind.

(10) The term also does not include sales of chemical sprays or washes to persons for the purpose of postharvest treatment of fruit for the prevention of scald, fungus, mold, or decay, nor does it include sales of feed, seed, seedlings, fertilizer, agents for enhanced pollination including insects such as bees, and spray materials to: (a) Persons who participate in the federal conservation reserve program, the environmental quality incentives program, the wetlands reserve program, and the wildlife habitat incentives program, or their successors administered by the United States department of agriculture; (b) farmers for the purpose of producing for sale any agricultural product; and (c) farmers acting under cooperative habitat development or access contracts with an organization exempt from federal income tax under Title 26 U.S.C. Sec. 501(c)(3) or the Washington state department of fish and wildlife to produce or improve wildlife habitat on land that the farmer owns or leases.

(11) The term does not include the sale of or charge made for labor and services rendered in respect to the constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW, including the installing, or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation. Nor does the term include the sale of services or charges made for the clearing of land and the moving of earth of or for the United States, any instrumentality thereof, or a county or city housing authority. Nor does the term include the sale of services or charges made for cleaning up for the United States, or its instrumentalities, radioactive waste and other byproducts of weapons production and nuclear research and development.

(12) The term does not include the sale of or charge made for labor, services, or tangible personal property pursuant to agreements providing maintenance services for bus, rail, or rail fixed guideway equipment when a regional transit authority is the recipient of the labor, services, or tangible personal property, and a transit agency, as defined in RCW 81.104.015, performs the labor or services. [2009 c 535 § 301. Prior: 2007 c 54 § 4; 2007 c 6 § 1004; prior: 2005 c 515 § 2; 2005 c 514 § 101; prior: 2004 c 174 § 3; 2004 c 153 § 407; 2003 c 168 § 104; 2002 c 178 § 1; 2000 2nd sp.s. c 4 § 23; prior: 1998 c 332 § 2; 1998 c 315 § 1; 1998 c 308 § 1; 1998 c 275 § 1; 1997 c 127 § 1; prior: 1996 c 148 § 1; 1996 c 112 § 1; 1995 1st sp.s. c 12 § 2; 1995 c 39 § 2; 1993 sp.s. c 25 § 301; 1988 c 253 § 1; prior: 1987 c 285 § 1; 1987 c 23 § 2; 1986 c 231 § 1; 1983 2nd ex.s. c 3 § 25; 1981 c 144 § 3; 1975 1st ex.s. c 291 § 5; 1975 1st ex.s. c 90 § 1; 1973 1st ex.s.

c 145 § 1; 1971 ex.s. c 299 § 3; 1971 ex.s. c 281 § 1; 1970 ex.s. c 8 § 1; prior: 1969 ex.s. c 262 § 30; 1969 ex.s. c 255 § 3; 1967 ex.s. c 149 § 4; 1965 ex.s. c 173 § 1; 1963 c 7 § 1; prior: 1961 ex.s. c 24 § 1; 1961 c 293 § 1; 1961 c 15 § 82.04.050; prior: 1959 ex.s. c 5 § 2; 1957 c 279 § 1; 1955 c 389 § 6; 1953 c 91 § 3; 1951 2nd ex.s. c 28 § 3; 1949 c 228 § 2, part; 1945 c 249 § 1, part; 1943 c 156 § 2, part; 1941 c 178 § 2, part; 1939 c 225 § 2, part; 1937 c 227 § 2, part; 1935 c 180 § 5, part; Rem. Supp. 1949 § 8370-5, part.]

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Severability—2007 c 54: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2007 c 54 § 32.]

Part headings not law—Savings—Effective date—Severability—2007 c 6: See notes following RCW 82.32.020.

Findings—Intent—2007 c 6: See note following RCW 82.14.495.

Findings—2005 c 515: "The legislature finds that:

(1) Public entities that receive tax dollars must continuously improve the way they operate and deliver service so citizens receive maximum value for their tax dollars; and

(2) An explicit statement clarifying that no sales or use tax shall apply to the entire charge paid by regional transit authorities for bus or rail combined operations and maintenance agreements that are provided to such authorities in support of their provision of urban transportation or transportation services is necessary to improve efficient service." [2005 c 515 § 1.]

Effective date—2005 c 514: See note following RCW 83.100.230.

Part headings not law—Severability—2005 c 514: See notes following RCW 82.12.808.

Effective date—2004 c 174: See note following RCW 82.04.2908.

Retroactive effective date—Effective date—2004 c 153: See note following RCW 82.08.0293.

Effective dates—Part headings not law—2003 c 168: See notes following RCW 82.08.010.

Retroactive application—Effective date—2002 c 178: See notes following RCW 67.28.180.

Findings—Construction—2000 2nd sp.s. c 4 §§ 18-30: See notes following RCW 81.112.300.

Findings—Intent—Effective date—1998 c 332: See notes following RCW 82.04.29001.

Effective dates—1998 c 308: "(1) Sections 1 through 4 of this act take effect July 1, 1998.

(2) Section 5 of this act takes effect July 1, 2003." [1998 c 308 § 6.]

Effective date—1998 c 275: "This act takes effect July 1, 1998." [1998 c 275 § 2.]

Effective date—1997 c 127: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1997." [1997 c 127 § 2.]

Severability—1996 c 148: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1996 c 148 § 7.]

Effective date—1996 c 148: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect April 1, 1996." [1996 c 148 § 8.]

Effective date—1996 c 112: "This act shall take effect July 1, 1996." [1996 c 112 § 5.]

Intent—1995 1st sp.s. c 12: "It is the intent of the legislature that massage services be recognized as health care practitioners for the purposes of business and occupation tax application. To achieve this intent massage services are being removed from the definition of sale at retail and retail sale." [1995 1st sp.s. c 12 § 1.]

Effective date—1995 1st sp.s. c 12: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 1st sp.s. c 12 § 5.]

Effective date—1995 c 39: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 c 39 § 3.]

Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25: See notes following RCW 82.04.230.

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Intent—Severability—Effective date—1981 c 144: See notes following RCW 82.16.010.

Application to preexisting contracts—1975 1st ex.s. c 291; 1975 1st ex.s. c 90: See note following RCW 82.12.010.

Effective dates—1975 1st ex.s. c 291: "This 1975 amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing institutions, and shall take effect immediately: PROVIDED, That sections 8 and 26 through 43 of this amendatory act shall be effective on and after January 1, 1976: PROVIDED FURTHER, That sections 2, 3, and 4, and subsections (1) and (2) of section 24 shall be effective on and after January 1, 1977: AND PROVIDED FURTHER, That subsections (3) through (15) of section 24 shall be effective on and after January 1, 1978." [1975 1st ex.s. c 291 § 46.]

Severability—1975 1st ex.s. c 291: "If any provision of this 1975 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1975 1st ex.s. c 291 § 45.]

Effective date—1975 1st ex.s. c 90: "This 1975 amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1975." [1975 1st ex.s. c 90 § 5.]

Effective date—1973 1st ex.s. c 145: "This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1973." [1973 1st ex.s. c 145 § 2.]

Effective dates—1971 ex.s. c 299: "This 1971 amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect as follows:

(1) Sections 1 through 12, 15 through 34 and 53 shall take effect July 1, 1971;

(2) Sections 13, 14, and 77 and 78 shall take effect June 1, 1971; and

(3) Sections 35 through 52 and 54 through 76 shall take effect as provided in section 53." [1971 ex.s. c 299 § 79.]

Severability—1971 ex.s. c 299: "If any phrase, clause, subsection or section of this 1971 amendatory act shall be declared unconstitutional or invalid by any court of competent jurisdiction, it shall be conclusively presumed that the legislature would have enacted this 1971 amendatory act without the phrase, clause, subsection or section so held unconstitutional or invalid and the remainder of the act shall not be affected as a result of said part being held unconstitutional or invalid." [1971 ex.s. c 299 § 78.]

Construction—Severability—1969 ex.s. c 255: See notes following RCW 35.58.272.

Effective date—1967 ex.s. c 149: "This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1967." [1967 ex.s. c 149 § 65.]

Effective date—1965 ex.s. c 173: "This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect June 1, 1965." [1965 ex.s. c 173 § 33.]

Credit for retail sales or use taxes paid to other jurisdictions with respect to property used: RCW 82.12.035.

"Services rendered in respect to" defined: RCW 82.04.051.

82.04.050 "Sale at retail," "retail sale." ***(Effective January 1, 2010.)*** (1) "Sale at retail" or "retail sale" means every sale of tangible personal property (including articles produced, fabricated, or imprinted) to all persons irrespective

of the nature of their business and including, among others, without limiting the scope hereof, persons who install, repair, clean, alter, improve, construct, or decorate real or personal property of or for consumers other than a sale to a person who presents a seller's permit or uniform exemption certificate in conformity with RCW 82.04.470 and who:

(a) Purchases for the purpose of resale as tangible personal property in the regular course of business without intervening use by such person, but a purchase for the purpose of resale by a regional transit authority under RCW 81.112.300 is not a sale for resale; or

(b) Installs, repairs, cleans, alters, imprints, improves, constructs, or decorates real or personal property of or for consumers, if such tangible personal property becomes an ingredient or component of such real or personal property without intervening use by such person; or

(c) Purchases for the purpose of consuming the property purchased in producing for sale a new article of tangible personal property or substance, of which such property becomes an ingredient or component or is a chemical used in processing, when the primary purpose of such chemical is to create a chemical reaction directly through contact with an ingredient of a new article being produced for sale; or

(d) Purchases for the purpose of consuming the property purchased in producing ferrosilicon which is subsequently used in producing magnesium for sale, if the primary purpose of such property is to create a chemical reaction directly through contact with an ingredient of ferrosilicon; or

(e) Purchases for the purpose of providing the property to consumers as part of competitive telephone service, as defined in RCW 82.04.065. The term shall include every sale of tangible personal property which is used or consumed or to be used or consumed in the performance of any activity classified as a "sale at retail" or "retail sale" even though such property is resold or utilized as provided in (a), (b), (c), (d), or (e) of this subsection following such use. The term also means every sale of tangible personal property to persons engaged in any business which is taxable under RCW 82.04.280 (2) and (7), 82.04.290, and 82.04.2908; or

(f) Purchases for the purpose of satisfying the person's obligations under an extended warranty as defined in subsection (7) of this section, if such tangible personal property replaces or becomes an ingredient or component of property covered by the extended warranty without intervening use by such person.

(2) The term "sale at retail" or "retail sale" includes the sale of or charge made for tangible personal property consumed and/or for labor and services rendered in respect to the following:

(a) The installing, repairing, cleaning, altering, imprinting, or improving of tangible personal property of or for consumers, including charges made for the mere use of facilities in respect thereto, but excluding charges made for the use of self-service laundry facilities, and also excluding sales of laundry service to nonprofit health care facilities, and excluding services rendered in respect to live animals, birds and insects;

(b) The constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for consumers, including the installing or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation, and shall also include the sale of services or charges made for the clearing of land and the moving of earth excepting the mere leveling of land used in commercial farming or agriculture;

(c) The constructing, repairing, or improving of any structure upon, above, or under any real property owned by an owner who conveys the property by title, possession, or any other means to the person performing such construction, repair, or improvement for the purpose of performing such construction, repair, or improvement and the property is then reconveyed by title, possession, or any other means to the original owner;

(d) The cleaning, fumigating, razing, or moving of existing buildings or structures, but may not include the charge made for janitorial services; and for purposes of this section the term "janitorial services" shall mean those cleaning and caretaking services ordinarily performed by commercial janitor service businesses including, but not limited to, wall and window washing, floor cleaning and waxing, and the cleaning in place of rugs, drapes and upholstery. The term "janitorial services" does not include painting, papering, repairing, furnace or septic tank cleaning, snow removal or sandblasting;

(e) Automobile towing and similar automotive transportation services, but not in respect to those required to report and pay taxes under chapter 82.16 RCW;

(f) The furnishing of lodging and all other services by a hotel, rooming house, tourist court, motel, trailer camp, and the granting of any similar license to use real property, as distinguished from the renting or leasing of real property, and it is presumed that the occupancy of real property for a continuous period of one month or more constitutes a rental or lease of real property and not a mere license to use or enjoy the same. For the purposes of this subsection, it shall be presumed that the sale of and charge made for the furnishing of lodging for a continuous period of one month or more to a person is a rental or lease of real property and not a mere license to enjoy the same;

(g) The installing, repairing, altering, or improving of digital goods for consumers;

(h) Persons taxable under (a), (b), (c), (d), (e), (f), and (g) of this subsection when such sales or charges are for property, labor and services which are used or consumed in whole or in part by such persons in the performance of any activity defined as a "sale at retail" or "retail sale" even though such property, labor and services may be resold after such use or consumption. Nothing contained in this subsection shall be construed to modify subsection (1) of this section and nothing contained in subsection (1) of this section may be construed to modify this subsection.

(3) The term "sale at retail" or "retail sale" includes the sale of or charge made for personal, business, or professional services including amounts designated as interest, rents, fees, admission, and other service emoluments however designated, received by persons engaging in the following business activities:

(a) Amusement and recreation services including but not limited to golf, pool, billiards, skating, bowling, ski lifts and

tows, day trips for sightseeing purposes, and others, when provided to consumers;

(b) Abstract, title insurance, and escrow services;

(c) Credit bureau services;

(d) Automobile parking and storage garage services;

(e) Landscape maintenance and horticultural services but excluding (i) horticultural services provided to farmers and (ii) pruning, trimming, repairing, removing, and clearing of trees and brush near electric transmission or distribution lines or equipment, if performed by or at the direction of an electric utility;

(f) Service charges associated with tickets to professional sporting events; and

(g) The following personal services: Physical fitness services, tanning salon services, tattoo parlor services, steam bath services, turkish bath services, escort services, and dating services.

(4)(a) The term also includes:

(i) The renting or leasing of tangible personal property to consumers; and

(ii) Providing tangible personal property along with an operator for a fixed or indeterminate period of time. A consideration of this is that the operator is necessary for the tangible personal property to perform as designed. For the purpose of this subsection (4)(a)(ii), an operator must do more than maintain, inspect, or set up the tangible personal property.

(b) The term does not include the renting or leasing of tangible personal property where the lease or rental is for the purpose of sublease or subrent.

(5) The term also includes the providing of "competitive telephone service," "telecommunications service," or "ancillary services," as those terms are defined in RCW 82.04.065, to consumers.

(6)(a) The term also includes the sale of prewritten computer software other than a sale to a person who presents a seller's permit or uniform exemption certificate in conformity with RCW 82.04.470, regardless of the method of delivery to the end user. For purposes of this subsection (6)(a), the sale of prewritten computer software includes the sale of or charge made for a key or an enabling or activation code, where the key or code is required to activate prewritten computer software and put the software into use. There is no separate sale of the key or code from the prewritten computer software, regardless of how the sale may be characterized by the vendor or by the purchaser.

The term "retail sale" does not include the sale of or charge made for:

(i) Custom software; or

(ii) The customization of prewritten computer software.

(b) The term also includes the charge made to consumers for the right to access and use prewritten computer software, where possession of the software is maintained by the seller or a third party, regardless of whether the charge for the service is on a per use, per user, per license, subscription, or some other basis.

(7) The term also includes the sale of or charge made for an extended warranty to a consumer. For purposes of this subsection, "extended warranty" means an agreement for a specified duration to perform the replacement or repair of tangible personal property at no additional charge or a reduced charge for tangible personal property, labor, or both, or to provide indemnification for the replacement or repair of tangible personal property, based on the occurrence of specified events. The term "extended warranty" does not include an agreement, otherwise meeting the definition of extended warranty in this subsection, if no separate charge is made for the agreement and the value of the agreement is included in the sales price of the tangible personal property covered by the agreement. For purposes of this subsection, "sales price" has the same meaning as in RCW 82.08.010.

(8)(a) The term also includes the following sales to consumers of digital goods, digital codes, and digital automated services:

(i) Sales in which the seller has granted the purchaser the right of permanent use;

(ii) Sales in which the seller has granted the purchaser a right of use that is less than permanent;

(iii) Sales in which the purchaser is not obligated to make continued payment as a condition of the sale; and

(iv) Sales in which the purchaser is obligated to make continued payment as a condition of the sale.

(b) A retail sale of digital goods, digital codes, or digital automated services under this subsection (8) includes any services provided by the seller exclusively in connection with the digital goods, digital codes, or digital automated services, whether or not a separate charge is made for such services.

(c) For purposes of this subsection, "permanent" means perpetual or for an indefinite or unspecified length of time. A right of permanent use is presumed to have been granted unless the agreement between the seller and the purchaser specifies or the circumstances surrounding the transaction suggest or indicate that the right to use terminates on the occurrence of a condition subsequent.

(9) The term does not include the sale of or charge made for labor and services rendered in respect to the building, repairing, or improving of any street, place, road, highway, easement, right-of-way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state or by the United States and which is used or to be used primarily for foot or vehicular traffic including mass transportation vehicles of any kind.

(10) The term also does not include sales of chemical sprays or washes to persons for the purpose of postharvest treatment of fruit for the prevention of scald, fungus, mold, or decay, nor does it include sales of feed, seed, seedlings, fertilizer, agents for enhanced pollination including insects such as bees, and spray materials to: (a) Persons who participate in the federal conservation reserve program, the environmental quality incentives program, the wetlands reserve program, and the wildlife habitat incentives program, or their successors administered by the United States department of agriculture; (b) farmers for the purpose of producing for sale any agricultural product; and (c) farmers acting under cooperative habitat development or access contracts with an organization exempt from federal income tax under Title 26 U.S.C. Sec. 501(c)(3) or the Washington state department of fish and wildlife to produce or improve wildlife habitat on land that the farmer owns or leases.

(11) The term does not include the sale of or charge made for labor and services rendered in respect to the con-

structing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW, including the installing, or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation. Nor does the term include the sale of services or charges made for the clearing of land and the moving of earth of or for the United States, any instrumentality thereof, or a county or city housing authority. Nor does the term include the sale of services or charges made for cleaning up for the United States, or its instrumentalities, radioactive waste and other byproducts of weapons production and nuclear research and development.

(12) The term does not include the sale of or charge made for labor, services, or tangible personal property pursuant to agreements providing maintenance services for bus, rail, or rail fixed guideway equipment when a regional transit authority is the recipient of the labor, services, or tangible personal property, and a transit agency, as defined in RCW 81.104.015, performs the labor or services. [2009 c 563 § 301; 2009 c 535 § 301. Prior: 2007 c 54 § 4; 2007 c 6 § 1004; prior: 2005 c 515 § 2; 2005 c 514 § 101; prior: 2004 c 174 § 3; 2004 c 153 § 407; 2003 c 168 § 104; 2002 c 178 § 1; 2000 2nd sp.s. c 4 § 23; prior: 1998 c 332 § 2; 1998 c 315 § 1; 1998 c 308 § 1; 1998 c 275 § 1; 1997 c 127 § 1; prior: 1996 c 148 § 1; 1996 c 112 § 1; 1995 1st sp.s. c 12 § 2; 1995 c 39 § 2; 1993 sp.s. c 25 § 301; 1988 c 253 § 1; prior: 1987 c 285 § 1; 1987 c 23 § 2; 1986 c 231 § 1; 1983 2nd ex.s. c 3 § 25; 1981 c 144 § 3; 1975 1st ex.s. c 291 § 5; 1975 1st ex.s. c 90 § 1; 1973 1st ex.s. c 145 § 1; 1971 ex.s. c 299 § 3; 1971 ex.s. c 281 § 1; 1970 ex.s. c 8 § 1; prior: 1969 ex.s. c 262 § 30; 1969 ex.s. c 255 § 3; 1967 ex.s. c 149 § 4; 1965 ex.s. c 173 § 1; 1963 c 7 § 1; prior: 1961 ex.s. c 24 § 1; 1961 c 293 § 1; 1961 c 15 § 82.04.050; prior: 1959 ex.s. c 5 § 2; 1957 c 279 § 1; 1955 c 389 § 6; 1953 c 91 § 3; 1951 2nd ex.s. c 28 § 3; 1949 c 228 § 2, part; 1945 c 249 § 1, part; 1943 c 156 § 2, part; 1941 c 178 § 2, part; 1939 c 225 § 2, part; 1937 c 227 § 2, part; 1935 c 180 § 5, part; Rem. Supp. 1949 § 8370-5, part.]

Reviser's note: This section was amended by 2009 c 535 § 301 and by 2009 c 563 § 301, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Finding—Intent—Construction—Effective date—Reports and recommendations—2009 c 563: See notes following RCW 82.32.780.

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Severability—2007 c 54: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2007 c 54 § 32.]

Part headings not law—Savings—Effective date—Severability—2007 c 6: See notes following RCW 82.32.020.

Findings—Intent—2007 c 6: See note following RCW 82.14.495.

Findings—2005 c 515: "The legislature finds that:

(1) Public entities that receive tax dollars must continuously improve the way they operate and deliver service so citizens receive maximum value for their tax dollars; and

(2) An explicit statement clarifying that no sales or use tax shall apply to the entire charge paid by regional transit authorities for bus or rail combined operations and maintenance agreements that are provided to such authorities in support of their provision of urban transportation or transportation services is necessary to improve efficient service." [2005 c 515 § 1.]

Effective date—2005 c 514: See note following RCW 83.100.230.

Part headings not law—Severability—2005 c 514: See notes following RCW 82.12.808.

Effective date—2004 c 174: See note following RCW 82.04.2908.

Retroactive effective date—Effective date—2004 c 153: See note following RCW 82.08.0293.

Effective dates—Part headings not law—2003 c 168: See notes following RCW 82.08.010.

Retroactive application—Effective date—2002 c 178: See notes following RCW 67.28.180.

Findings—Construction—2000 2nd sp.s. c 4 §§ 18-30: See notes following RCW 81.112.300.

Findings—Intent—Effective date—1998 c 332: See notes following RCW 82.04.29001.

Effective dates—1998 c 308: "(1) Sections 1 through 4 of this act take effect July 1, 1998.

(2) Section 5 of this act takes effect July 1, 2003." [1998 c 308 § 6.]

Effective date—1998 c 275: "This act takes effect July 1, 1998." [1998 c 275 § 2.]

Effective date—1997 c 127: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1997." [1997 c 127 § 2.]

Severability—1996 c 148: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1996 c 148 § 7.]

Effective date—1996 c 148: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect April 1, 1996." [1996 c 148 § 8.]

Effective date—1996 c 112: "This act shall take effect July 1, 1996." [1996 c 112 § 5.]

Intent—1995 1st sp.s. c 12: "It is the intent of the legislature that massage services be recognized as health care practitioners for the purposes of business and occupation tax application. To achieve this intent massage services are being removed from the definition of sale at retail and retail sale." [1995 1st sp.s. c 12 § 1.]

Effective date—1995 1st sp.s. c 12: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 1st sp.s. c 12 § 5.]

Effective date—1995 c 39: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 c 39 § 3.]

Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25: See notes following RCW 82.04.230.

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Intent—Severability—Effective date—1981 c 144: See notes following RCW 82.16.010.

Application to preexisting contracts—1975 1st ex.s. c 291; 1975 1st ex.s. c 90: See note following RCW 82.12.010.

Effective dates—1975 1st ex.s. c 291: "This 1975 amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing institutions, and shall take effect immediately: PROVIDED, That sections 8 and 26 through 43 of this amendatory act shall be effective on and after January 1, 1976: PROVIDED FURTHER, That sections 2, 3, and 4, and subsections (1) and (2) of section 24 shall be effective on and after January 1, 1977: AND PROVIDED FURTHER, That subsections (3) through (15) of section 24 shall be effective on and after January 1, 1978." [1975 1st ex.s. c 291 § 46.]

Severability—1975 1st ex.s. c 291: "If any provision of this 1975 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1975 1st ex.s. c 291 § 45.]

Effective date—1975 1st ex.s. c 90: "This 1975 amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1975." [1975 1st ex.s. c 90 § 5.]

Effective date—1973 1st ex.s. c 145: "This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1973." [1973 1st ex.s. c 145 § 2.]

Effective dates—1971 ex.s. c 299: "This 1971 amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect as follows:

(1) Sections 1 through 12, 15 through 34 and 53 shall take effect July 1, 1971;

(2) Sections 13, 14, and 77 and 78 shall take effect June 1, 1971; and

(3) Sections 35 through 52 and 54 through 76 shall take effect as provided in section 53." [1971 ex.s. c 299 § 79.]

Severability—1971 ex.s. c 299: "If any phrase, clause, subsection or section of this 1971 amendatory act shall be declared unconstitutional or invalid by any court of competent jurisdiction, it shall be conclusively presumed that the legislature would have enacted this 1971 amendatory act without the phrase, clause, subsection or section so held unconstitutional or invalid and the remainder of the act shall not be affected as a result of said part being held unconstitutional or invalid." [1971 ex.s. c 299 § 78.]

Construction—Severability—1969 ex.s. c 255: See notes following RCW 35.58.272.

Effective date—1967 ex.s. c 149: "This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1967." [1967 ex.s. c 149 § 65.]

Effective date—1965 ex.s. c 173: "This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect June 1, 1965." [1965 ex.s. c 173 § 33.]

Credit for retail sales or use taxes paid to other jurisdictions with respect to property used: RCW 82.12.035.

"Services rendered in respect to" defined: RCW 82.04.051.

82.04.060 "Sale at wholesale," "wholesale sale." "Sale at wholesale" or "wholesale sale" means:

(1) Any sale, which is not a sale at retail, of:

(a) Tangible personal property;

(b) Services defined as a retail sale in RCW 82.04.050(2) (a) or (g);

(c) Amusement or recreation services as defined in RCW 82.04.050(3)(a);

(d) Prewritten computer software;

(e) Services described in RCW 82.04.050(6)(b);

(f) Extended warranties as defined in RCW 82.04.050(7);

(g) Competitive telephone service, ancillary services, or telecommunications service as those terms are defined in RCW 82.04.065; or

(h) Digital goods, digital codes, or digital automated services; and

(2) Any charge made for labor and services rendered for persons who are not consumers, in respect to real or personal property, if such charge is expressly defined as a retail sale by RCW 82.04.050 when rendered to or for consumers. For the purposes of this subsection (2), "real or personal property" does not include any natural products named in RCW 82.04.100. [2009 c 535 § 403; 2007 c 6 § 1007; 2005 c 514 § 102; 2002 c 367 § 1; 1998 c 332 § 5; 1996 c 148 § 3; 1983 2nd ex.s. c 3 § 26; 1961 c 15 § 82.04.060. Prior: 1955 ex.s. c 10 § 4; 1955 c 389 § 7; prior: 1949 c 228 § 2, part; 1945 c 249 § 1, part; 1943 c 156 § 2, part; 1941 c 178 § 2, part; 1939 c 225 § 2, part; 1937 c 227 § 2, part; 1935 c 180 § 5, part; Rem. Supp. 1949 § 8370-5, part.]

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Part headings not law—Savings—Effective date—Severability—2007 c 6: See notes following RCW 82.32.020.

Findings—Intent—2007 c 6: See note following RCW 82.14.495.

Effective date—2005 c 514: See note following RCW 83.100.230.

Part headings not law—Severability—2005 c 514: See notes following RCW 82.12.808.

Severability—2002 c 367: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2002 c 367 § 7.]

Effective date—2002 c 367: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect June 1, 2002." [2002 c 367 § 8.]

Findings—Intent—Effective date—1998 c 332: See notes following RCW 82.04.29001.

Severability—Effective date—1996 c 148: See notes following RCW 82.04.050.

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

82.04.065 Telephone, telecommunications, and ancillary services—Definitions. (1) "800 service" means a telecommunications service that allows a caller to dial a toll-free number without incurring a charge for the call. The service is typically marketed under the name "800," "855," "866," "877," and "888" toll-free calling, and any subsequent numbers designated by the federal communications commission.

(2) "900 service" means an inbound toll "telecommunications service" purchased by a subscriber that allows the subscriber's customers to call in to the subscriber's prerecorded announcement or live service. "900 service" does not include the charge for: Collection services provided by the seller of the telecommunications services to the subscriber, or services or products sold by the subscriber to the subscriber's customer. The service is typically marketed under the name "900" service, and any subsequent numbers designated by the federal communications commission.

(3) "Ancillary services" means services that are associated with or incidental to the provision of "telecommunications services," including but not limited to "detailed telecommunications billing," "directory assistance," "vertical service," and "voice mail services."

(4) "Charges for mobile telecommunications services" means any charge for, or associated with, the provision of commercial mobile radio service, as defined in section 20.3, Title 47 C.F.R. as in effect on June 1, 1999, or any charge for, or associated with, a service provided as an adjunct to a commercial mobile radio service, regardless of whether individual transmissions originate or terminate within the licensed service area of the mobile telecommunications service provider.

(5) "Competitive telephone service" means the providing by any person of telecommunications equipment or apparatus, or service related to that equipment or apparatus such as repair or maintenance service, if the equipment or apparatus is of a type which can be provided by persons that are not

subject to regulation as telephone companies under Title 80 RCW and for which a separate charge is made.

(6) "Conference-bridging service" means an ancillary service that links two or more participants of an audio or video conference call and may include the provision of a telephone number. "Conference-bridging service" does not include the telecommunications services used to reach the conference bridge.

(7) "Customer" means: (a) The person or entity that contracts with the home service provider for mobile telecommunications services; or (b) the end user of the mobile telecommunications service, if the end user of mobile telecommunications services is not the contracting party, but this subsection (7)(b) applies only for the purpose of determining the place of primary use. The term does not include a reseller of mobile telecommunications service, or a serving carrier under an arrangement to serve the customer outside the home service provider's licensed service area.

(8) "Designated database provider" means a person representing all the political subdivisions of the state that is:

(a) Responsible for providing an electronic database prescribed in 4 U.S.C. Sec. 119(a) if the state has not provided an electronic database; and

(b) Approved by municipal and county associations or leagues of the state whose responsibility it would otherwise be to provide a database prescribed by 4 U.S.C. Secs. 116 through 126.

(9) "Detailed telecommunications billing service" means an ancillary service of separately stating information pertaining to individual calls on a customer's billing statement.

(10) "Directory assistance" means an ancillary service of providing telephone number information, and/or address information.

(11) "Enhanced zip code" means a United States postal zip code of nine or more digits.

(12) "Fixed wireless service" means a telecommunications service that provides radio communication between fixed points.

(13) "Home service provider" means the facilities-based carrier or reseller with whom the customer contracts for the provision of mobile telecommunications services.

(14) "Licensed service area" means the geographic area in which the home service provider is authorized by law or contract to provide commercial mobile radio service to the customer.

(15) "Mobile telecommunications service" means commercial mobile radio service, as defined in section 20.3, Title 47 C.F.R. as in effect on June 1, 1999.

(16) "Mobile telecommunications service provider" means a home service provider or a serving carrier.

(17) "Mobile wireless service" means a telecommunications service that is transmitted, conveyed, or routed regardless of the technology used, whereby the origination and/or termination points of the transmission, conveyance, or routing are not fixed, including, by way of example only, telecommunications services that are provided by a commercial mobile radio service provider.

(18) "Paging service" means a telecommunications service that provides transmission of coded radio signals for the purpose of activating specific pagers; these transmissions may include messages and/or sounds.

(19) "Place of primary use" means the street address representative of where the customer's use of the mobile telecommunications service primarily occurs, which must be:

(a) The residential street address or the primary business street address of the customer; and

(b) Within the licensed service area of the home service provider.

(20) "Prepaid calling service" means the right to access exclusively telecommunications services, which must be paid for in advance and which enable the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount.

(21) "Prepaid telephone calling service" means the right to purchase exclusively telecommunications services that must be paid for in advance, that enables the origination of calls using an access number, authorization code, or both, whether manually or electronically dialed, if the remaining amount of units of service that have been prepaid is known by the provider of the prepaid service on a continuous basis.

(22) "Prepaid wireless calling service" means a telecommunications service that provides the right to use mobile wireless service as well as other nontelecommunications services including the download of digital products delivered electronically, content, and ancillary services, which must be paid for in advance and that is sold in predetermined units or dollars of which the number declines with use in a known amount.

(23) "Private communications service" means a telecommunications service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which the channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of the channel or channels.

(24) "Reseller" means a provider who purchases telecommunications services from another telecommunications service provider and then resells, uses as a component part of, or integrates the purchased services into a mobile telecommunications service. "Reseller" does not include a serving carrier with whom a home service provider arranges for the services to its customers outside the home service provider's licensed service area.

(25) "Serving carrier" means a facilities-based carrier providing mobile telecommunications service to a customer outside a home service provider's or reseller's licensed service area.

(26) "Taxing jurisdiction" means any of the several states, the District of Columbia, or any territory or possession of the United States, any municipality, city, county, township, parish, transportation district, or assessment jurisdiction, or other political subdivision within the territorial limits of the United States with the authority to impose a tax, charge, or fee.

(27) "Telecommunications service" means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. "Telecommunications service" includes such transmission, conveyance, or routing in which

computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice over internet protocol services or is classified by the federal communications commission as enhanced or value added. "Telecommunications service" does not include:

(a) Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser where such purchaser's primary purpose for the underlying transaction is the processed data or information;

(b) Installation or maintenance of wiring or equipment on a customer's premises;

(c) Tangible personal property;

(d) Advertising, including but not limited to directory advertising;

(e) Billing and collection services provided to third parties;

(f) Internet access service;

(g) Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance, and routing of such services by the programming service provider. Radio and television audio and video programming services include but are not limited to cable service as defined in 47 U.S.C. Sec. 522(6) and audio and video programming services delivered by commercial mobile radio service providers, as defined in section 20.3, Title 47 C.F.R.;

(h) Ancillary services;

(i) Digital products delivered electronically, including but not limited to music, video, reading materials, or ring tones; or

(j) Software delivered electronically.

(28) "Value-added nonvoice data service" means a service that otherwise meets the definition of telecommunications services in which computer processing applications are used to act on the form, content, code, or protocol of the information or data primarily for a purpose other than transmission, conveyance, or routing.

(29) "Vertical service" means an ancillary service that is offered in connection with one or more telecommunications services, that offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections, including conference-bridging services.

(30) "Voice mail service" means an ancillary service that enables the customer to store, send, or receive recorded messages. "Voice mail service" does not include any vertical services that the customer may be required to have in order to use the voice mail service. [2009 c 535 § 413; 2007 c 6 § 1003; 2007 c 6 § 1002; 2002 c 67 § 2; 1997 c 304 § 5; 1983 2nd ex.s. c 3 § 24.]

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

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Part headings not law—Savings—Effective date—Severability—2007 c 6: See notes following RCW 82.32.020.

Findings—Intent—2007 c 6: See note following RCW 82.14.495.

***Contingent effective date—2007 c 6 §§ 1003, 1006, 1014, and 1018:** "Sections 1003, 1006, 1014, and 1018 of this act take effect the later of: The date chapter 67, Laws of 2002, becomes null and void; or July 1, 2008." [2007 c 6 § 1707.]

***Reviser's note:** 2002 C 67 § 18 was repealed by 2007 c 54 § 2 without cognizance of its amendment by 2007 c 6 § 1701. That section has been decodified for publication purposes under RCW 1.12.025.

Finding—Contingency—Court judgment—Effective date—2002 c 67: See note and Reviser's note following RCW 82.04.530.

Findings—Severability—Effective date—1997 c 304: See notes following RCW 35.21.717.

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

License fees or taxes on telephone business by cities: RCW 35.21.712 through 35.21.715.

Sales tax exemption for certain telephone, telecommunications, and ancillary services: RCW 82.08.0289.

82.04.070 "Gross proceeds of sales." "Gross proceeds of sales" means the value proceeding or accruing from the sale of tangible personal property, digital goods, digital codes, digital automated services, and/or for other services rendered, without any deduction on account of the cost of property sold, the cost of materials used, labor costs, interest, discount paid, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses. [2009 c 535 § 404; 1961 c 15 § 82.04.070. Prior: 1955 c 389 § 8; prior: 1949 c 228 § 2, part; 1945 c 249 § 1, part; 1943 c 156 § 2, part; 1941 c 178 § 2, part; 1939 c 225 § 2, part; 1937 c 227 § 2, part; 1935 c 180 § 5, part; Rem. Supp. 1949 § 8370-5, part.]

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

82.04.110 "Manufacturer." (1) Except as otherwise provided in this section, "manufacturer" means every person who, either directly or by contracting with others for the necessary labor or mechanical services, manufactures for sale or for commercial or industrial use from his or her own materials or ingredients any articles, substances, or commodities.

(2)(a) When the owner of equipment or facilities furnishes, or sells to the customer prior to manufacture, all or a portion of the materials that become a part or whole of the manufactured article, the department shall prescribe equitable rules for determining tax liability.

(b) A person who produces aluminum master alloys is a processor for hire rather than a manufacturer, regardless of the portion of the aluminum provided by that person's customer. For the purposes of this subsection (2)(b), "aluminum master alloy" means an alloy registered with the aluminum association as a grain refiner or a hardener alloy using the American national standards institute designating system H35.3.

(3) A nonresident of this state who is the owner of materials processed for it in this state by a processor for hire shall not be deemed to be engaged in business in this state as a manufacturer because of the performance of such processing work for it in this state.

(4) The owner of materials from which a nuclear fuel assembly is made for it by a processor for hire shall not be subject to tax under this chapter as a manufacturer of the fuel assembly.

(5) For purposes of this section, the terms "articles," "substances," "materials," "ingredients," and "commodities"

do not include digital goods. [2009 c 535 § 405; 1997 c 453 § 1; 1971 ex.s. c 186 § 1; 1961 c 15 § 82.04.110. Prior: 1955 c 389 § 12; prior: 1949 c 228 § 2, part; 1945 c 249 § 1, part; 1943 c 156 § 2, part; 1941 c 178 § 2, part; 1939 c 225 § 2, part; 1937 c 227 § 2, part; 1935 c 180 § 5, part; Rem. Supp. 1949 § 8370-5, part.]

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Effective date—1997 c 453: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1997." [1997 c 453 § 2.]

Effective date—1971 ex.s. c 186: "The effective date of this 1971 amendatory act is July 1, 1971." [1971 ex.s. c 186 § 5.]

82.04.120 "To manufacture." "To manufacture" embraces all activities of a commercial or industrial nature wherein labor or skill is applied, by hand or machinery, to materials so that as a result thereof a new, different or useful substance or article of tangible personal property is produced for sale or commercial or industrial use, and shall include: (1) The production or fabrication of special made or custom made articles; (2) the production or fabrication of dental appliances, devices, restorations, substitutes, or other dental laboratory products by a dental laboratory or dental technician; (3) cutting, delimbing, and measuring of felled, cut, or taken trees; and (4) crushing and/or blending of rock, sand, stone, gravel, or ore.

"To manufacture" shall not include: Conditioning of seed for use in planting; cubing hay or alfalfa; activities which consist of cutting, grading, or ice glazing seafood which has been cooked, frozen, or canned outside this state; the growing, harvesting, or producing of agricultural products; packing of agricultural products, including sorting, washing, rinsing, grading, waxing, treating with fungicide, packaging, chilling, or placing in controlled atmospheric storage; the production of digital goods; or the production of computer software if the computer software is delivered from the seller to the purchaser by means other than tangible storage media, including the delivery by use of a tangible storage media where the tangible storage media is not physically transferred to the purchaser. [2009 c 535 § 406; 2003 c 168 § 604; 1999 sp.s. c 9 § 1; 1999 c 211 § 2; 1998 c 168 § 1; 1997 c 384 § 1; 1989 c 302 § 201. Prior: 1989 c 302 § 101; 1987 c 493 § 1; 1982 2nd ex.s. c 9 § 2; 1975 1st ex.s. c 291 § 6; 1965 ex.s. c 173 § 3; 1961 c 15 § 82.04.120; prior: 1959 ex.s. c 3 § 2; 1955 c 389 § 13; prior: 1949 c 228 § 2, part; 1945 c 249 § 1, part; 1943 c 156 § 2, part; 1941 c 178 § 2, part; 1939 c 225 § 2, part; 1937 c 227 § 2, part; 1935 c 180 § 5, part; Rem. Supp. 1949 § 8370-5, part.]

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Effective dates—Part headings not law—2003 c 168: See notes following RCW 82.08.010.

Intent—1999 sp.s. c 9: "This act is intended to clarify that this is the intent of the legislature both retroactively and prospectively." [1999 sp.s. c 9 § 4.]

Severability—1999 sp.s. c 9: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1999 sp.s. c 9 § 5.]

Effective date—1999 sp.s. c 9: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [June 7, 1999]." [1999 sp.s. c 9 § 6.]

Intent—1999 c 211 §§ 2 and 3: "The legislature intends that sections 2 and 3 of this act be clarifying in nature and are retroactive in response to the administrative difficulties encountered in implementing the original legislation." [1999 c 211 § 4.]

Effective date—1999 c 211 §§ 1-4: "Sections 1 through 4 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [May 7, 1999]." [1999 c 211 § 7.]

Finding—Intent—1999 c 211: See note following RCW 82.08.02565.

Effective date—1998 c 168: "This act takes effect October 1, 1998." [1998 c 168 § 4.]

Effective date—1997 c 384: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1997." [1997 c 384 § 3.]

Finding—Purpose—1989 c 302: "(1) The legislature finds that chapter 9, Laws of 1982 2nd ex. sess. was intended to extend state public utility taxation to electrical energy generated in this state for eventual distribution outside this state. The legislature further finds that chapter 9, Laws of 1982 2nd ex. sess. was held unconstitutional by the Thurston county superior court in *Washington Water Power v. State of Washington* (memorandum opinion No. 83-2-00977-1). The purpose of *Part I of this act is to recognize the effect of that decision by correcting the relevant RCW sections to read as though the legislature had not enacted chapter 9, Laws of 1982 2nd ex. sess., and thereby make clear the effect of subsequent amendments in *Part II of this act.

(2) The purpose of *Part II of this act is to provide a constitutional means of replacing the revenue lost as a result of the Washington Water Power decision." [1989 c 302 § 1.]

***Reviser's note:** For "Part" division see 1989 c 302.

Effective date—1982 2nd ex.s. c 9: See note following RCW 82.16.010.

Effective dates—Severability—1975 1st ex.s. c 291: See notes following RCW 82.04.050.

82.04.190 "Consumer." "Consumer" means the following:

(1) Any person who purchases, acquires, owns, holds, or uses any article of tangible personal property irrespective of the nature of the person's business and including, among others, without limiting the scope hereof, persons who install, repair, clean, alter, improve, construct, or decorate real or personal property of or for consumers other than for the purpose (a) of resale as tangible personal property in the regular course of business or (b) of incorporating such property as an ingredient or component of real or personal property when installing, repairing, cleaning, altering, imprinting, improving, constructing, or decorating such real or personal property of or for consumers or (c) of consuming such property in producing for sale a new article of tangible personal property or a new substance, of which such property becomes an ingredient or component or as a chemical used in processing, when the primary purpose of such chemical is to create a chemical reaction directly through contact with an ingredient of a new article being produced for sale or (d) of consuming the property purchased in producing ferrosilicon which is subsequently used in producing magnesium for sale, if the primary purpose of such property is to create a chemical reaction directly through contact with an ingredient of ferrosilicon or (e) of satisfying the person's obligations under an extended warranty as defined in RCW 82.04.050(7), if such tangible personal property replaces or becomes an ingredient or com-

ponent of property covered by the extended warranty without intervening use by such person;

(2)(a) Any person engaged in any business activity taxable under RCW 82.04.290 or 82.04.2908; (b) any person who purchases, acquires, or uses any competitive telephone service, ancillary services, or telecommunications service as those terms are defined in RCW 82.04.065, other than for resale in the regular course of business; (c) any person who purchases, acquires, or uses any service defined in RCW 82.04.050(2) (a) or (g), other than for resale in the regular course of business or for the purpose of satisfying the person's obligations under an extended warranty as defined in RCW 82.04.050(7); (d) any person who purchases, acquires, or uses any amusement and recreation service defined in RCW 82.04.050(3)(a), other than for resale in the regular course of business; (e) any person who purchases or acquires an extended warranty as defined in RCW 82.04.050(7) other than for resale in the regular course of business; and (f) any person who is an end user of software. For purposes of this subsection (2)(f) and RCW 82.04.050(6), a person who purchases or otherwise acquires prewritten computer software, who provides services described in RCW 82.04.050(6)(b) and who will charge consumers for the right to access and use the prewritten computer software, is not an end user of the prewritten computer software;

(3) Any person engaged in the business of contracting for the building, repairing or improving of any street, place, road, highway, easement, right-of-way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state of Washington or by the United States and which is used or to be used primarily for foot or vehicular traffic including mass transportation vehicles of any kind as defined in RCW 82.04.280, in respect to tangible personal property when such person incorporates such property as an ingredient or component of such publicly owned street, place, road, highway, easement, right-of-way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle by installing, placing or spreading the property in or upon the right-of-way of such street, place, road, highway, easement, bridge, tunnel, or trestle or in or upon the site of such mass public transportation terminal or parking facility;

(4) Any person who is an owner, lessee or has the right of possession to or an easement in real property which is being constructed, repaired, decorated, improved, or otherwise altered by a person engaged in business, excluding only (a) municipal corporations or political subdivisions of the state in respect to labor and services rendered to their real property which is used or held for public road purposes, and (b) the United States, instrumentalities thereof, and county and city housing authorities created pursuant to chapter 35.82 RCW in respect to labor and services rendered to their real property. Nothing contained in this or any other subsection of this definition shall be construed to modify any other definition of "consumer";

(5) Any person who is an owner, lessee, or has the right of possession to personal property which is being constructed, repaired, improved, cleaned, imprinted, or otherwise altered by a person engaged in business;

(6) Any person engaged in the business of constructing, repairing, decorating, or improving new or existing buildings or other structures under, upon, or above real property of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW, including the installing or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation; also, any person engaged in the business of clearing land and moving earth of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW. Any such person shall be a consumer within the meaning of this subsection in respect to tangible personal property incorporated into, installed in, or attached to such building or other structure by such person, except that consumer does not include any person engaged in the business of constructing, repairing, decorating, or improving new or existing buildings or other structures under, upon, or above real property of or for the United States, or any instrumentality thereof, if the investment project would qualify for sales and use tax deferral under chapter 82.63 RCW if undertaken by a private entity;

(7) Any person who is a lessor of machinery and equipment, the rental of which is exempt from the tax imposed by RCW 82.08.020 under RCW 82.08.02565, with respect to the sale of or charge made for tangible personal property consumed in respect to repairing the machinery and equipment, if the tangible personal property has a useful life of less than one year. Nothing contained in this or any other subsection of this section shall be construed to modify any other definition of "consumer";

(8) Any person engaged in the business of cleaning up for the United States, or its instrumentalities, radioactive waste and other byproducts of weapons production and nuclear research and development;

(9) Any person who is an owner, lessee, or has the right of possession of tangible personal property that, under the terms of an extended warranty as defined in RCW 82.04.050(7), has been repaired or is replacement property, but only with respect to the sale of or charge made for the repairing of the tangible personal property or the replacement property;

(10) Any person who purchases, acquires, or uses services described in RCW 82.04.050(6)(b) other than for resale in the regular course of business; and

(11)(a) Any end user of a digital product or digital code.

(b)(i) For purposes of this subsection, "end user" means any taxpayer as defined in RCW 82.12.010 other than a taxpayer who receives by contract a digital product for further commercial broadcast, rebroadcast, transmission, retransmission, licensing, relicensing, distribution, redistribution or exhibition of the product, in whole or in part, to others. A person that purchases digital products or digital codes for the purpose of giving away such products or codes will not be considered to have engaged in the distribution or redistribution of such products or codes and will be treated as an end user;

(ii) If a purchaser of a digital code does not receive the contractual right to further redistribute, after the digital code is redeemed, the underlying digital product to which the digital code relates, then the purchaser of the digital code is an end user. If the purchaser of the digital code receives the contractual right to further redistribute, after the digital code is

redeemed, the underlying digital product to which the digital code relates, then the purchaser of the digital code is not an end user. A purchaser of a digital code who has the contractual right to further redistribute the digital code is an end user if that purchaser does not have the right to further redistribute, after the digital code is redeemed, the underlying digital product to which the digital code relates. [2009 c 535 § 302; 2007 c 6 § 1008; 2005 c 514 § 103. Prior: 2004 c 174 § 4; 2004 c 2 § 8; 2002 c 367 § 2; prior: 1998 c 332 § 6; 1998 c 308 § 2; prior: 1996 c 173 § 2; 1996 c 148 § 4; 1996 c 112 § 2; 1995 1st sp.s. c 3 § 4; 1986 c 231 § 2; 1985 c 134 § 1; 1983 2nd ex.s. c 3 § 27; 1975 1st ex.s. c 90 § 2; 1971 ex.s. c 299 § 4; 1969 ex.s. c 255 § 4; 1967 ex.s. c 149 § 6; 1965 ex.s. c 173 § 4; 1961 c 15 § 82.04.190; prior: 1959 ex.s. c 3 § 3; 1957 c 279 § 2; 1955 c 389 § 20; prior: 1949 c 228 § 2, part; 1945 c 249 § 1, part; 1943 c 156 § 2, part; 1941 c 178 § 2, part; 1939 c 225 § 2, part; 1937 c 227 § 2, part; 1935 c 180 § 5, part; Rem. Supp. 1949 § 8370-5, part.]

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Part headings not law—Savings—Effective date—Severability—2007 c 6: See notes following RCW 82.32.020.

Findings—Intent—2007 c 6: See note following RCW 82.14.495.

Effective date—2005 c 514: See note following RCW 83.100.230.

Part headings not law—Severability—2005 c 514: See notes following RCW 82.12.808.

Effective date—2004 c 174: See note following RCW 82.04.2908.

Severability—Effective date—2002 c 367: See notes following RCW 82.04.060.

Findings—Intent—Effective date—1998 c 332: See notes following RCW 82.04.29001.

Effective dates—1998 c 308: See note following RCW 82.04.050.

Findings—Intent—1996 c 173: See note following RCW 82.08.02565.

Severability—Effective date—1996 c 148: See notes following RCW 82.04.050.

Effective date—1996 c 112: See note following RCW 82.04.050.

Findings—Effective date—1995 1st sp.s. c 3: See notes following RCW 82.08.02565.

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Application to preexisting contracts—1975 1st ex.s. c 90: See note following RCW 82.12.010.

Effective date—1975 1st ex.s. c 90: See note following RCW 82.04.050.

Effective dates—Severability—1971 ex.s. c 299: See notes following RCW 82.04.050.

Construction—Severability—1969 ex.s. c 255: See notes following RCW 35.58.272.

82.04.192 Digital products definitions. (1) "Digital audio works" means works that result from the fixation of a series of musical, spoken, or other sounds, including ringtones.

(2) "Digital audio-visual works" means a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any.

(3)(a) "Digital automated service," except as provided in (b) of this subsection (3), means any service transferred electronically that uses one or more software applications.

(b) "Digital automated service" does not include:

(i) Any service that primarily involves the application of human effort, and the human effort originated after the customer requested the service;

(ii) The loaning or transferring of money or the purchase, sale, or transfer of financial instruments. For purposes of this subsection (3)(b)(ii), "financial instruments" include cash, accounts receivable and payable, loans and notes receivable and payable, debt securities, equity securities, as well as derivative contracts such as forward contracts, swap contracts, and options;

(iii) Dispensing cash or other physical items from a machine;

(iv) Payment processing services;

(v) Parimutuel wagering and handicapping contests as authorized by chapter 67.16 RCW;

(vi) Telecommunications services and ancillary services as those terms are defined in RCW 82.04.065;

(vii) The internet and internet access as those terms are defined in RCW 82.04.297;

(viii) The service described in RCW 82.04.050(6)(b);

(ix) Online educational programs provided by a:

(A) Public or private elementary or secondary school; or

(B) An institution of higher education as defined in sections 1001 or 1002 of the federal higher education act of 1965 (Title 20 U.S.C. Secs. 1001 and 1002), as existing on July 1, 2009. For purposes of this subsection (3)(b)(ix)(B), an online educational program must be encompassed within the institution's accreditation;

(x) Travel agent services, including online travel services, and automated systems used by travel agents to book reservations;

(xi) A service that allows the person receiving the service to make online sales of products or services, digital or otherwise, using the service provider's web site. The service described in this subsection (3)(b)(xi) does not include the underlying sale of the products or services, digital or otherwise, by the person receiving the service; and

(xii) Online classified advertising services.

(4) "Digital books" means works that are generally recognized in the ordinary and usual sense as books.

(5) "Digital code" means a code that provides a purchaser with the right to obtain one or more digital products, if all of the digital products to be obtained through the use of the code have the same sales and use tax treatment. "Digital code" does not include a code that represents a stored monetary value that is deducted from a total as it is used by the purchaser. "Digital code" also does not include a code that represents a redeemable card, gift card, or gift certificate that entitles the holder to select digital products of an indicated cash value. A digital code may be obtained by any means, including e-mail or by tangible means regardless of its designation as song code, video code, book code, or some other term.

(6)(a) "Digital goods," except as provided in (b) of this subsection (6), means sounds, images, data, facts, or information, or any combination thereof, transferred electronically, including, but not limited to, specified digital products and other products transferred electronically not included within the definition of specified digital products.

(b) The term "digital goods" does not include:

(i) Telecommunications services and ancillary services as those terms are defined in RCW 82.04.065;

(ii) Computer software as defined in RCW 82.04.215;

(iii) Internet access as defined in RCW 82.04.297;

(iv) The representation of a personal service in electronic form, such as an electronic copy of an engineering report prepared by an engineer, that primarily involves the application of human effort, and the human effort originated after the customer requested the service; and

(v) Digital automated services and services and activities excluded from the definition of digital automated services in subsection (3)(b) of this section.

(7) "Digital products" means digital goods and digital automated services.

(8) "Electronically transferred" or "transferred electronically" means obtained by the purchaser by means other than tangible storage media. It is not necessary that a copy of the product be physically transferred to the purchaser. So long as the purchaser may access the product, it will be considered to have been electronically transferred to the purchaser.

(9) "Specified digital products" means electronically transferred digital audio-visual works, digital audio works, and digital books. [2009 c 535 § 201.]

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

Intent—2009 c 535: "(1) In 2007, the legislature directed the department of revenue (department) to conduct a study of the taxation of electronically delivered products (digital products). In conducting the study, the department was assisted by a committee comprised of legislators, academics, and individuals representing different segments of government and industry (the "study committee").

(2) At the conclusion of the study, the department issued its final report December 5, 2008. The final report noted that any recommendations to the legislature should promote the following goals: (a) Simplicity and fairness; (b) conformity with the streamlined sales and use tax agreement; (c) neutrality regardless of industry, content, and delivery method while taking the purchaser's underlying property rights into account; (d) consideration given to the revenue impact of potential changes to the tax base; (e) consideration given to the impact caused by the pyramiding of business inputs; (f) maintaining or enhancing the competitiveness of businesses located in Washington; and (g) maintaining certainty, consistency, durability, and equity despite changes in technology and business models.

(3) While the department's final report did not contain recommendations for the legislature, the report's conclusion notes that the study committee found that legislation implementing digital products tax policy is necessary in 2009 to: (a) Protect the sales and use tax base; (b) establish certainty in our tax code; (c) maintain conformity with the streamlined sales and use tax agreement; and (d) encourage economic development.

(4) This act is the outgrowth of the work of the department and the study committee. The purpose of this act is to implement those findings of the study committee noted in subsection (3) of this section. This act also takes into account the goals noted in subsection (2) of this section. Moreover, this act contains specific provisions to: (a) Provide protections for taxpayers who failed to pay or collect tax on digital products for periods before July 26, 2009; and (b) promote the location of server farms and data centers in this state by preventing the department from considering a person's ownership of, or rights in, digital goods or digital codes residing on servers located in this state in determining whether the person has nexus with this state for purposes of the taxes imposed in Title 82 RCW." [2009 c 535 § 101.]

Construction—2009 c 535: "This act does not have any impact whatsoever on the characterization of digital goods and digital codes as tangible or intangible personal property for purposes of property taxation and may not be used in any way in construing any provision of Title 84 RCW." [2009 c 535 § 1201.]

Construction—2009 c 535: "The repeals in sections 515 and 623 of this act do not affect any existing right acquired or liability or obligation incurred under the statutes repealed or under any rule or order adopted under those statutes nor do they affect any proceedings instituted under them." [2009 c 535 § 1203.]

82.04.257 Tax on digital products and services. (1) Upon every person engaging within this state in the business of making sales at retail or wholesale of digital goods, digital codes, digital automated services, or services described in RCW 82.04.050 (2)(g) or (6)(b), as to such persons, the amount of tax with respect to such business is equal to the gross proceeds of sales of the business, multiplied by the rate of 0.471 percent in the case of retail sales and by the rate of 0.484 percent in the case of wholesale sales.

(2) For purposes of this section, a person is considered to be engaging within this state in the business of making sales of digital goods, digital codes, digital automated services, or services described in RCW 82.04.050 (2)(g) or (6)(b), if the person makes sales of digital goods, digital codes, digital automated services, or services described in RCW 82.04.050 (2)(g) or (6)(b) and the sales are sourced to this state under RCW 82.32.730 for sales tax purposes or would have been sourced to this state under RCW 82.32.730 if the sale had been taxable under chapter 82.08 RCW.

(3) A person subject to tax under this section must report the tax imposed in this chapter in an electronic format provided by the department. [2009 c 535 § 401.]

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

82.04.258 Digital products—Apportionable income. (1)(a) Any person subject to tax under RCW 82.04.257 engaging both within and outside this state in the business of making sales at retail or wholesale of digital goods, digital codes, digital automated services, or services described in RCW 82.04.050 (2)(g) or (6)(b), must apportion to this state that portion of apportionable income derived from activity performed within this state as provided in subsection (2) of this section.

(b) For purposes of this subsection, a person is considered to be engaging outside this state in the business of making sales of digital goods, digital codes, digital automated services, or services described in RCW 82.04.050 (2)(g) or (6)(b) if the person makes any sales of digital goods, digital codes, digital automated services, or services described in RCW 82.04.050 (2)(g) or (6)(b) that are sourced to a jurisdiction other than Washington under RCW 82.32.730 for sales tax purposes or would have been sourced to a jurisdiction other than Washington under RCW 82.32.730 if the sale had been a retail sale.

(2) Apportionable income must be apportioned to Washington by multiplying the apportionable income by the sales factor.

(3)(a) The sales factor is a fraction, the numerator of which is the total receipts of the taxpayer from making sales of digital goods, digital codes, digital automated services, and services described in RCW 82.04.050 (2)(g) or (6)(b) in this state during the tax period, and the denominator of which is the total receipts of the taxpayer derived from such activity everywhere during the tax period.

(b) For purposes of computing the sales factor, sales are considered in this state if the sale was sourced to this state under RCW 82.32.730 for sales tax purposes or would have

been sourced to this state under RCW 82.32.730 if the sale had been taxable under chapter 82.08 RCW.

(4) For purposes of this section, "apportionable income" means the gross income of the business taxable under RCW 82.04.257, including income received from activities outside this state if the income would be taxable under RCW 82.04.257 if received from activities in this state. [2009 c 535 § 402.]

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

82.04.260 Tax on manufacturers and processors of various foods and by-products—Research and development organizations—Travel agents—Certain international activities—Stevedoring and associated activities—Low-level waste disposers—Insurance producers, surplus line brokers, and title insurance agents—Hospitals—Commercial airplane activities—Timber product activities—Canned salmon processors. (1) Upon every person engaging within this state in the business of manufacturing:

(a) Wheat into flour, barley into pearl barley, soybeans into soybean oil, canola into canola oil, canola meal, or canola byproducts, or sunflower seeds into sunflower oil; as to such persons the amount of tax with respect to such business shall be equal to the value of the flour, pearl barley, oil, canola meal, or canola byproduct manufactured, multiplied by the rate of 0.138 percent;

(b) Beginning July 1, 2012, seafood products that remain in a raw, raw frozen, or raw salted state at the completion of the manufacturing by that person; or selling manufactured seafood products that remain in a raw, raw frozen, or raw salted state at the completion of the manufacturing, to purchasers who transport in the ordinary course of business the goods out of this state; as to such persons the amount of tax with respect to such business shall be equal to the value of the products manufactured or the gross proceeds derived from such sales, multiplied by the rate of 0.138 percent. Sellers must keep and preserve records for the period required by RCW 82.32.070 establishing that the goods were transported by the purchaser in the ordinary course of business out of this state;

(c) Beginning July 1, 2012, dairy products that as of September 20, 2001, are identified in 21 C.F.R., chapter 1, parts 131, 133, and 135, including byproducts from the manufacturing of the dairy products such as whey and casein; or selling the same to purchasers who transport in the ordinary course of business the goods out of state; as to such persons the tax imposed shall be equal to the value of the products manufactured or the gross proceeds derived from such sales multiplied by the rate of 0.138 percent. Sellers must keep and preserve records for the period required by RCW 82.32.070 establishing that the goods were transported by the purchaser in the ordinary course of business out of this state;

(d) Beginning July 1, 2012, fruits or vegetables by canning, preserving, freezing, processing, or dehydrating fresh fruits or vegetables, or selling at wholesale fruits or vegetables manufactured by the seller by canning, preserving, freezing, processing, or dehydrating fresh fruits or vegetables and sold to purchasers who transport in the ordinary course of business the goods out of this state; as to such persons the amount of tax with respect to such business shall be equal to the value of the products manufactured or the gross proceeds derived from such sales multiplied by the rate of 0.138 percent. Sellers must keep and preserve records for the period required by RCW 82.32.070 establishing that the goods were transported by the purchaser in the ordinary course of business out of this state;

(e) Until July 1, 2009, alcohol fuel, biodiesel fuel, or biodiesel feedstock, as those terms are defined in RCW 82.29A.135; as to such persons the amount of tax with respect to the business shall be equal to the value of alcohol fuel, biodiesel fuel, or biodiesel feedstock manufactured, multiplied by the rate of 0.138 percent; and

(f) Alcohol fuel or wood biomass fuel, as those terms are defined in RCW 82.29A.135; as to such persons the amount of tax with respect to the business shall be equal to the value of alcohol fuel or wood biomass fuel manufactured, multiplied by the rate of 0.138 percent.

(2) Upon every person engaging within this state in the business of splitting or processing dried peas; as to such persons the amount of tax with respect to such business shall be equal to the value of the peas split or processed, multiplied by the rate of 0.138 percent.

(3) Upon every nonprofit corporation and nonprofit association engaging within this state in research and development, as to such corporations and associations, the amount of tax with respect to such activities shall be equal to the gross income derived from such activities multiplied by the rate of 0.484 percent.

(4) Upon every person engaging within this state in the business of slaughtering, breaking and/or processing perishable meat products and/or selling the same at wholesale only and not at retail; as to such persons the tax imposed shall be equal to the gross proceeds derived from such sales multiplied by the rate of 0.138 percent.

(5) Upon every person engaging within this state in the business of acting as a travel agent or tour operator; as to such persons the amount of the tax with respect to such activities shall be equal to the gross income derived from such activities multiplied by the rate of 0.275 percent.

(6) Upon every person engaging within this state in business as an international steamship agent, international customs house broker, international freight forwarder, vessel and/or cargo charter broker in foreign commerce, and/or international air cargo agent; as to such persons the amount of the tax with respect to only international activities shall be equal to the gross income derived from such activities multiplied by the rate of 0.275 percent.

(7) Upon every person engaging within this state in the business of stevedoring and associated activities pertinent to the movement of goods and commodities in waterborne interstate or foreign commerce; as to such persons the amount of tax with respect to such business shall be equal to the gross proceeds derived from such activities multiplied by the rate of 0.275 percent. Persons subject to taxation under this subsection shall be exempt from payment of taxes imposed by chapter 82.16 RCW for that portion of their business subject to taxation under this subsection. Stevedoring and associated activities pertinent to the conduct of goods and commodities in waterborne interstate or foreign commerce are defined as all activities of a labor, service or transportation nature whereby cargo may be loaded or unloaded to or from vessels

or barges, passing over, onto or under a wharf, pier, or similar structure; cargo may be moved to a warehouse or similar holding or storage yard or area to await further movement in import or export or may move to a consolidation freight station and be stuffed, unstuffed, containerized, separated or otherwise segregated or aggregated for delivery or loaded on any mode of transportation for delivery to its consignee. Specific activities included in this definition are: Wharfage, handling, loading, unloading, moving of cargo to a convenient place of delivery to the consignee or a convenient place for further movement to export mode; documentation services in connection with the receipt, delivery, checking, care, custody and control of cargo required in the transfer of cargo; imported automobile handling prior to delivery to consignee; terminal stevedoring and incidental vessel services, including but not limited to plugging and unplugging refrigerator service to containers, trailers, and other refrigerated cargo receptacles, and securing ship hatch covers.

(8) Upon every person engaging within this state in the business of disposing of low-level waste, as defined in RCW 43.145.010; as to such persons the amount of the tax with respect to such business shall be equal to the gross income of the business, excluding any fees imposed under chapter 43.200 RCW, multiplied by the rate of 3.3 percent.

If the gross income of the taxpayer is attributable to activities both within and without this state, the gross income attributable to this state shall be determined in accordance with the methods of apportionment required under RCW 82.04.460.

(9) Upon every person engaging within this state as an insurance producer or title insurance agent licensed under chapter 48.17 RCW or a surplus line broker licensed under chapter 48.15 RCW; as to such persons, the amount of the tax with respect to such licensed activities shall be equal to the gross income of such business multiplied by the rate of 0.484 percent.

(10) Upon every person engaging within this state in business as a hospital, as defined in chapter 70.41 RCW, that is operated as a nonprofit corporation or by the state or any of its political subdivisions, as to such persons, the amount of tax with respect to such activities shall be equal to the gross income of the business multiplied by the rate of 0.75 percent through June 30, 1995, and 1.5 percent thereafter.

(11)(a) Beginning October 1, 2005, upon every person engaging within this state in the business of manufacturing commercial airplanes, or components of such airplanes, or making sales, at retail or wholesale, of commercial airplanes or components of such airplanes, manufactured by the seller, as to such persons the amount of tax with respect to such business shall, in the case of manufacturers, be equal to the value of the product manufactured and the gross proceeds of sales of the product manufactured, or in the case of processors for hire, be equal to the gross income of the business, multiplied by the rate of:

(i) 0.4235 percent from October 1, 2005, through the later of June 30, 2007; and

(ii) 0.2904 percent beginning July 1, 2007.

(b) Beginning July 1, 2008, upon every person who is not eligible to report under the provisions of (a) of this subsection (11) and is engaging within this state in the business of manufacturing tooling specifically designed for use in manufacturing commercial airplanes or components of such airplanes, or making sales, at retail or wholesale, of such tooling manufactured by the seller, as to such persons the amount of tax with respect to such business shall, in the case of manufacturers, be equal to the value of the product manufactured and the gross proceeds of sales of the product manufactured, or in the case of processors for hire, be equal to the gross income of the business, multiplied by the rate of 0.2904 percent.

(c) For the purposes of this subsection (11), "commercial airplane" and "component" have the same meanings as provided in RCW 82.32.550.

(d) In addition to all other requirements under this title, a person eligible for the tax rate under this subsection (11) must report as required under RCW 82.32.545.

(e) This subsection (11) does not apply on and after July 1, 2024.

(12)(a) Until July 1, 2024, upon every person engaging within this state in the business of extracting timber or extracting for hire timber; as to such persons the amount of tax with respect to the business shall, in the case of extractors, be equal to the value of products, including byproducts, extracted, or in the case of extractors for hire, be equal to the gross income of the business, multiplied by the rate of 0.4235 percent from July 1, 2006, through June 30, 2007, and 0.2904 percent from July 1, 2007, through June 30, 2024.

(b) Until July 1, 2024, upon every person engaging within this state in the business of manufacturing or processing for hire: (i) Timber into timber products or wood products; or (ii) timber products into other timber products or wood products; as to such persons the amount of the tax with respect to the business shall, in the case of manufacturers, be equal to the value of products, including byproducts, manufactured, or in the case of processors for hire, be equal to the gross income of the business, multiplied by the rate of 0.4235 percent from July 1, 2006, through June 30, 2007, and 0.2904 percent from July 1, 2007, through June 30, 2024.

(c) Until July 1, 2024, upon every person engaging within this state in the business of selling at wholesale: (i) Timber extracted by that person; (ii) timber products manufactured by that person from timber or other timber products; or (iii) wood products manufactured by that person from timber or timber products; as to such persons the amount of the tax with respect to the business shall be equal to the gross proceeds of sales of the timber, timber products, or wood products multiplied by the rate of 0.4235 percent from July 1, 2006, through June 30, 2007, and 0.2904 percent from July 1, 2007, through June 30, 2024.

(d) Until July 1, 2024, upon every person engaging within this state in the business of selling standing timber; as to such persons the amount of the tax with respect to the business shall be equal to the gross income of the business multiplied by the rate of 0.2904 percent. For purposes of this subsection (12)(d), "selling standing timber" means the sale of timber apart from the land, where the buyer is required to sever the timber within thirty months from the date of the original contract, regardless of the method of payment for the timber and whether title to the timber transfers before, upon, or after severance.

(e) For purposes of this subsection, the following definitions apply:

(i) "Biocomposite surface products" means surface material products containing, by weight or volume, more than fifty percent recycled paper and that also use nonpetroleum-based phenolic resin as a bonding agent.

(ii) "Paper and paper products" means products made of interwoven cellulosic fibers held together largely by hydrogen bonding. "Paper and paper products" includes newsprint; office, printing, fine, and pressure-sensitive papers; paper napkins, towels, and toilet tissue; kraft bag, construction, and other kraft industrial papers; paperboard, liquid packaging containers, containerboard, corrugated, and solid-fiber containers including linerboard and corrugated medium; and related types of cellulosic products containing primarily, by weight or volume, cellulosic materials. "Paper and paper products" does not include books, newspapers, magazines, periodicals, and other printed publications, advertising materials, calendars, and similar types of printed materials.

(iii) "Recycled paper" means paper and paper products having fifty percent or more of their fiber content that comes from postconsumer waste. For purposes of this subsection (12)(e)(iii), "postconsumer waste" means a finished material that would normally be disposed of as solid waste, having completed its life cycle as a consumer item.

(iv) "Timber" means forest trees, standing or down, on privately or publicly owned land. "Timber" does not include Christmas trees that are cultivated by agricultural methods or short-rotation hardwoods as defined in RCW 84.33.035.

(v) "Timber products" means:

(A) Logs, wood chips, sawdust, wood waste, and similar products obtained wholly from the processing of timber, short-rotation hardwoods as defined in RCW 84.33.035, or both;

(B) Pulp, including market pulp and pulp derived from recovered paper or paper products; and

(C) Recycled paper, but only when used in the manufacture of biocomposite surface products.

(vi) "Wood products" means paper and paper products; dimensional lumber; engineered wood products such as particleboard, oriented strand board, medium density fiberboard, and plywood; wood doors; wood windows; and biocomposite surface products.

(13) Upon every person engaging within this state in inspecting, testing, labeling, and storing canned salmon owned by another person, as to such persons, the amount of tax with respect to such activities shall be equal to the gross income derived from such activities multiplied by the rate of 0.484 percent.

(14) Upon every person engaging within this state in the business of printing a newspaper, publishing a newspaper, or both, the amount of tax on such business is equal to the gross income of the business multiplied by the rate of 0.2904 percent. [2009 c 479 § 64; 2009 c 461 § 1; 2009 c 162 § 34. Prior: 2008 c 296 § 1; 2008 c 217 § 100; 2008 c 81 § 4; prior: 2007 c 54 § 6; 2007 c 48 § 2; prior: 2006 c 354 § 4; 2006 c 300 § 1; prior: 2005 c 513 § 2; 2005 c 443 § 4; prior: 2003 2nd sp.s. c 1 § 4; 2003 2nd sp.s. c 1 § 3; 2003 c 339 § 11; 2003 c 261 § 11; 2001 2nd sp.s. c 25 § 2; prior: 1998 c 312 § 5; 1998 c 311 § 2; prior: 1998 c 170 § 4; 1996 c 148 § 2; 1996 c 115 § 1; prior: 1995 2nd sp.s. c 12 § 1; 1995 2nd sp.s. c 6 § 1; 1993 sp.s. c 25 § 104; 1993 c 492 § 304; 1991 c 272 § 15; 1990 c 21 § 2; 1987 c 139 § 1; prior: 1985 c 471 § 1; 1985 c 135 § 2; 1983 2nd ex.s. c 3 § 5; prior: 1983 1st ex.s. c 66 § 4; 1983 1st ex.s. c 55 § 4; 1982 2nd ex.s. c 13 § 1; 1982 c 10 § 16; prior: 1981 c 178 § 1; 1981 c 172 § 3; 1979 ex.s. c 196 § 2; 1975 1st ex.s. c 291 § 7; 1971 ex.s. c 281 § 5; 1971 ex.s. c 186 § 3; 1969 ex.s. c 262 § 36; 1967 ex.s. c 149 § 10; 1965 ex.s. c 173 § 6; 1961 c 15 § 82.04.260; prior: 1959 c 211 § 2; 1955 c 389 § 46; prior: 1953 c 91 § 4; 1951 2nd ex.s. c 28 § 4; 1950 ex.s. c 5 § 1, part; 1949 c 228 § 1, part; 1943 c 156 § 1, part; 1941 c 178 § 1, part; 1939 c 225 § 1, part; 1937 c 227 § 1, part; 1935 c 180 § 4, part; Rem. Supp. 1949 § 8370-4, part.]

Reviser's note: This section was amended by 2009 c 162 § 34, 2009 c 461 § 1, and by 2009 c 479 § 64, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2009 c 479: See note following RCW 2.56.030.

Effective date—Contingent effective date—2009 c 461: See note following RCW 82.04.280.

Effective date—2009 c 162: See note following RCW 48.03.020.

Retroactive application—2008 c 296: "Section 1 of this act applies retroactively to July 1, 2007, as well as prospectively." [2008 c 296 § 2.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

Findings—Savings—Effective date—2008 c 81: See notes following RCW 82.08.975.

Severability—2007 c 54: See note following RCW 82.04.050.

Effective date—2007 c 48: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2007." [2007 c 48 § 9.]

Effective dates—2006 c 354: See note following RCW 82.04.4268.

Effective dates—Contingent effective date—2006 c 300: See note following RCW 82.04.261.

Effective dates—2005 c 513: See note following RCW 82.04.4266.

Finding—Intent—Effective date—2005 c 443: See notes following RCW 82.08.0255.

Contingent effective date—2003 2nd sp.s. c 1: See RCW 82.32.550.

Finding—2003 2nd sp.s. c 1: See note following RCW 82.04.4461.

Effective dates—2003 c 339: See note following RCW 84.36.640.

Effective dates—2003 c 261: See note following RCW 84.36.635.

Purpose—Intent—2001 2nd sp.s. c 25: "The purpose of sections 2 and 3 of this act is to provide a tax rate for persons who manufacture dairy products that is commensurate to the rate imposed on certain other processors of agricultural commodities. This tax rate applies to persons who manufacture dairy products from raw materials such as fluid milk, dehydrated milk, or byproducts of milk such as cream, buttermilk, whey, butter, or casein. It is not the intent of the legislature to provide this tax rate to persons who use dairy products as an ingredient or component of their manufactured product, such as milk-based soups or pizza. It is the intent that persons who manufacture products such as milk, cheese, yogurt, ice cream, whey, or whey products be subject to this rate." [2001 2nd sp.s. c 25 § 1.]

Part headings not law—2001 2nd sp.s. c 25: "Part headings used in this act are not any part of the law." [2001 2nd sp.s. c 25 § 7.]

Effective date—Savings—1998 c 312: See notes following RCW 82.04.332.

Effective date—1998 c 170: See note following RCW 82.04.331.

Severability—Effective date—1996 c 148: See notes following RCW 82.04.050.

Effective date—1996 c 115: "This act shall take effect July 1, 1996." [1996 c 115 § 2.]

Effective date—1995 2nd sp.s. c 12: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 2nd sp.s. c 12 § 2.]

Effective date—1995 2nd sp.s. c 6: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 2nd sp.s. c 6 § 2.]

Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25: See notes following RCW 82.04.230.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

Effective dates—1991 c 272: See RCW 81.108.901.

Severability—1985 c 471: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 471 § 17.]

Effective date—1985 c 471: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1985." [1985 c 471 § 18.]

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Effective dates—1983 1st ex.s. c 55: See note following RCW 82.08.010.

Severability—1982 2nd ex.s. c 13: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 2nd ex.s. c 13 § 2.]

Effective date—1982 2nd ex.s. c 13: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect August 1, 1982." [1982 2nd ex.s. c 13 § 3.]

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

Effective dates—1981 c 172: See note following RCW 82.04.240.

Effective date—1979 ex.s. c 196: See note following RCW 82.04.240.

Effective dates—Severability—1975 1st ex.s. c 291: See notes following RCW 82.04.050.

Effective date—1971 ex.s. c 186: See note following RCW 82.04.110.

82.04.263 Tax on cleaning up radioactive waste and other by-products of weapons production and nuclear research and development. (1) Upon every person engaging within this state in the business of cleaning up for the United States, or its instrumentalities, radioactive waste and other by-products of weapons production and nuclear research and development; as to such persons the amount of the tax with respect to such business shall be equal to the gross income of the business multiplied by the rate of 0.471 percent.

(2) For the purposes of this chapter, "cleaning up radioactive waste and other by-products of weapons production and nuclear research and development" means:

(a) The activities of handling, storing, treating, immobilizing, stabilizing, or disposing of radioactive waste, radioactive tank waste and capsules, nonradioactive hazardous solid and liquid wastes, or spent nuclear fuel;

(b) Spent nuclear fuel conditioning;

(c) Removal of contamination in soils and groundwater;

(d) Decontamination and decommissioning of facilities; and (e) Services supporting the performance of cleanup. For the purposes of this subsection (2)(e), a service supports the performance of cleanup if it:

(i) Is within the scope of work under a clean-up contract with the United States department of energy; or

(ii) Assists in the accomplishment of a requirement of a clean-up project undertaken by the United States department of energy under a subcontract entered into with the prime contractor or another subcontractor in furtherance of a clean-up contract between the United States department of energy and a prime contractor.

(3) A service does not assist in the accomplishment of a requirement of a clean-up project undertaken by the United States department of energy if the same services are routinely provided to businesses not engaged in clean-up activities, except that the following services are always deemed to contribute to the accomplishment of a requirement of a clean-up project undertaken by the United States department of energy:

(a) Information technology and computer support services;

(b) Services rendered in respect to infrastructure; and

(c) Security, safety, and health services.

(4) The legislature intends that the examples provided in this subsection be used as a guideline when determining whether a service is "routinely provided to businesses not engaged in clean-up activities" as that phrase is used in subsection (3) of this section.

(a) The radioactive waste clean-up classification does not apply to general accounting services but does apply to performance audits performed for persons cleaning up radioactive waste.

(b) The radioactive waste clean-up classification does not apply to general legal services but does apply to those legal services that assist in the accomplishment of a requirement of a clean-up project undertaken by the United States department of energy. Thus, legal services provided to contest any local, state, or federal tax liability or to defend a company against a workers' compensation claim arising from a worksite injury do not qualify for the radioactive waste clean-up classification. But, legal services related to the resolution of a contractual dispute between the parties to a clean-up contract between the United States department of energy and a prime contractor do qualify.

(c) General office janitorial services do not qualify for the radioactive waste clean-up classification, but the specialized cleaning of equipment exposed to radioactive waste does qualify. [2009 c 469 § 202; 1996 c 112 § 3.]

Finding—Intent—2009 c 469: "(1) The legislature finds that the cleaning up of radioactive waste at the Hanford site is crucial to the environment in this state. The legislature intends to include services supporting the cleanup within the radioactive waste clean-up business and occupation tax classification, but it is not the legislature's intent to extend the radioactive waste clean-up classification to all business activities conducted at the Hanford site or performed for persons engaged in the performance of cleanup.

(2) It is the legislature's intent in enacting this legislation to ensure that the radioactive waste clean-up business and occupation tax classification applies to all services contributing to the performance of a clean-up project at the Hanford site other than services that are routinely provided to any business, including businesses that are not engaged in clean-up activities." [2009 c 469 § 201.]

Effective date—1996 c 112: See note following RCW 82.04.050.

82.04.280 Tax on printers, publishers, highway contractors, extracting or processing for hire, cold storage warehouse or storage warehouse operation, insurance general agents, radio and television broadcasting, government contractors—Cold storage warehouse defined—

Storage warehouse defined—Periodical or magazine defined. ***(Contingent expiration date.)*** Upon every person engaging within this state in the business of: (1) Printing materials other than newspapers, and of publishing periodicals or magazines; (2) building, repairing or improving any street, place, road, highway, easement, right-of-way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state or by the United States and which is used or to be used, primarily for foot or vehicular traffic including mass transportation vehicles of any kind and including any readjustment, reconstruction or relocation of the facilities of any public, private or cooperatively owned utility or railroad in the course of such building, repairing or improving, the cost of which readjustment, reconstruction, or relocation, is the responsibility of the public authority whose street, place, road, highway, easement, right-of-way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle is being built, repaired or improved; (3) extracting for hire or processing for hire, except persons taxable as extractors for hire or processors for hire under another section of this chapter; (4) operating a cold storage warehouse or storage warehouse, but not including the rental of cold storage lockers; (5) representing and performing services for fire or casualty insurance companies as an independent resident managing general agent licensed under the provisions of *RCW 48.05.310; (6) radio and television broadcasting, excluding network, national and regional advertising computed as a standard deduction based on the national average thereof as annually reported by the Federal Communications Commission, or in lieu thereof by itemization by the individual broadcasting station, and excluding that portion of revenue represented by the out-of-state audience computed as a ratio to the station's total audience as measured by the 100 micro-volt signal strength and delivery by wire, if any; (7) engaging in activities which bring a person within the definition of consumer contained in RCW 82.04.190(6); as to such persons, the amount of tax on such business is equal to the gross income of the business multiplied by the rate of 0.484 percent.

As used in this section, "cold storage warehouse" means a storage warehouse used to store fresh and/or frozen perishable fruits or vegetables, meat, seafood, dairy products, or fowl, or any combination thereof, at a desired temperature to maintain the quality of the product for orderly marketing.

As used in this section, "storage warehouse" means a building or structure, or any part thereof, in which goods, wares, or merchandise are received for storage for compensation, except field warehouses, fruit warehouses, fruit packing plants, warehouses licensed under chapter 22.09 RCW, public garages storing automobiles, railroad freight sheds, docks and wharves, and "self-storage" or "mini storage" facilities whereby customers have direct access to individual storage areas by separate entrance. "Storage warehouse" does not include a building or structure, or that part of such building or structure, in which an activity taxable under RCW 82.04.272 is conducted.

As used in this section, "periodical or magazine" means a printed publication, other than a newspaper, issued regularly at stated intervals at least once every three months, including any supplement or special edition of the publication. [2009 c 461 § 2; 2006 c 300 § 6; 2004 c 24 § 6; 1998 c 343 § 3; 1994 c 112 § 1; 1993 sp.s. c 25 § 303; 1993 sp.s. c 25 § 106; 1986 c 226 § 2; 1983 c 132 § 1; 1975 1st ex.s. c 90 § 3; 1971 ex.s. c 299 § 5; 1971 ex.s. c 281 § 7; 1970 ex.s. c 8 § 2. Prior: 1969 ex.s. c 262 § 38; 1969 ex.s. c 255 § 5; 1967 ex.s. c 149 § 13; 1963 c 168 § 1; 1961 c 15 § 82.04.280; prior: 1959 ex.s. c 5 § 4; 1959 ex.s. c 3 § 4; 1955 c 389 § 48; prior: 1950 ex.s. c 5 § 1, part; 1949 c 228 § 1, part; 1943 c 156 § 1, part; 1941 c 178 § 1, part; 1939 c 228 § 1, part; 1937 c 227 § 1, part; 1935 c 180 § 4, part; Rem. Supp. 1949 § 8370-4, part.]

***Reviser's note:** RCW 48.05.310 was repealed by 2007 c 117 § 39, effective July 1, 2009.

Contingent expiration date—2009 c 461: "Section 2 of this act expires on the date that section 3 of this act takes effect." [2009 c 461 § 11.]

Contingent expiration date—2006 c 300 § 6: "Section 6 of this act expires on the date that section 7 of this act takes effect." [2006 c 300 § 14.]

Effective dates—Contingent effective date—2006 c 300: See note following RCW 82.04.261.

Intent—Effective date—2004 c 24: See notes following RCW 82.04.2909.

Effective date—1998 c 343: See note following RCW 82.04.272.

Retroactive application—1994 c 112 § 1: "Section 1 of this act shall apply retroactively to July 1, 1993." [1994 c 112 § 5.]

Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25: See notes following RCW 82.04.230.

Effective date—1986 c 226: See note following RCW 82.16.010.

Application to preexisting contracts—1975 1st ex.s. c 90: See note following RCW 82.12.010.

Effective date—1975 1st ex.s. c 90: See note following RCW 82.04.050.

Effective dates—Severability—1971 ex.s. c 299: See notes following RCW 82.04.050.

82.04.280 Tax on printers, publishers, highway contractors, extracting or processing for hire, cold storage warehouse or storage warehouse operation, insurance general agents, radio and television broadcasting, government contractors—Cold storage warehouse defined—Storage warehouse defined—Periodical or magazine defined. ***(Contingent effective date.)*** Upon every person engaging within this state in the business of: (1) Printing materials other than newspapers, and of publishing periodicals or magazines; (2) building, repairing or improving any street, place, road, highway, easement, right-of-way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state or by the United States and which is used or to be used, primarily for foot or vehicular traffic including mass transportation vehicles of any kind and including any readjustment, reconstruction or relocation of the facilities of any public, private or cooperatively owned utility or railroad in the course of such building, repairing or improving, the cost of which readjustment, reconstruction, or relocation, is the responsibility of the public authority whose street, place, road, highway, easement, right-of-way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle is being built, repaired or improved; (3) extracting for hire or processing for hire, except persons taxable as extractors for hire or processors for hire under another section of this chapter; (4) operating a cold storage warehouse or storage warehouse, but not including the rental of cold stor-

age lockers; (5) representing and performing services for fire or casualty insurance companies as an independent resident managing general agent licensed under the provisions of *RCW 48.05.310; (6) radio and television broadcasting, excluding network, national and regional advertising computed as a standard deduction based on the national average thereof as annually reported by the Federal Communications Commission, or in lieu thereof by itemization by the individual broadcasting station, and excluding that portion of revenue represented by the out-of-state audience computed as a ratio to the station's total audience as measured by the 100 micro-volt signal strength and delivery by wire, if any; (7) engaging in activities which bring a person within the definition of consumer contained in RCW 82.04.190(6); as to such persons, the amount of tax on such business is equal to the gross income of the business multiplied by the rate of 0.484 percent.

As used in this section, "cold storage warehouse" means a storage warehouse used to store fresh and/or frozen perishable fruits or vegetables, meat, seafood, dairy products, or fowl, or any combination thereof, at a desired temperature to maintain the quality of the product for orderly marketing.

As used in this section, "storage warehouse" means a building or structure, or any part thereof, in which goods, wares, or merchandise are received for storage for compensation, except field warehouses, fruit warehouses, fruit packing plants, warehouses licensed under chapter 22.09 RCW, public garages storing automobiles, railroad freight sheds, docks and wharves, and "self-storage" or "mini storage" facilities whereby customers have direct access to individual storage areas by separate entrance. "Storage warehouse" does not include a building or structure, or that part of such building or structure, in which an activity taxable under RCW 82.04.272 is conducted.

As used in this section, "periodical or magazine" means a printed publication, other than a newspaper, issued regularly at stated intervals at least once every three months, including any supplement or special edition of the publication. [2009 c 461 § 3; 2006 c 300 § 7; 2003 c 149 § 4; 1998 c 343 § 3; 1994 c 112 § 1; 1993 sp.s. c 25 § 303; 1993 sp.s. c 25 § 106; 1986 c 226 § 2; 1983 c 132 § 1; 1975 1st ex.s. c 90 § 3; 1971 ex.s. c 299 § 5; 1971 ex.s. c 281 § 7; 1970 ex.s. c 8 § 2. Prior: 1969 ex.s. c 262 § 38; 1969 ex.s. c 255 § 5; 1967 ex.s. c 149 § 13; 1963 c 168 § 1; 1961 c 15 § 82.04.280; prior: 1959 ex.s. c 5 § 4; 1959 ex.s. c 3 § 4; 1955 c 389 § 48; prior: 1950 ex.s. c 5 § 1, part; 1949 c 228 § 1, part; 1943 c 156 § 1, part; 1941 c 178 § 1, part; 1939 c 228 § 1, part; 1937 c 227 § 1, part; 1935 c 180 § 4, part; Rem. Supp. 1949 § 8370-4, part.]

***Reviser's note:** RCW 48.05.310 was repealed by 2007 c 117 § 39, effective July 1, 2009.

Effective date—Contingent effective date—2009 c 461: "(1) Except as provided in subsection (2) of this section, this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2009.

(2) Section 3 of this act takes effect if the contingency in *section 9 of this act occurs." [2009 c 461 § 10.]

***Reviser's note:** See note following RCW 82.04.426.

Effective dates—Contingent effective date—2006 c 300: See note following RCW 82.04.261.

Contingent effective date—Findings—Intent—2003 c 149: See notes following RCW 82.04.426.

Effective date—1998 c 343: See note following RCW 82.04.272.

Retroactive application—1994 c 112 § 1: "Section 1 of this act shall apply retroactively to July 1, 1993." [1994 c 112 § 5.]

Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25: See notes following RCW 82.04.230.

Effective date—1986 c 226: See note following RCW 82.16.010.

Application to preexisting contracts—1975 1st ex.s. c 90: See note following RCW 82.12.010.

Effective date—1975 1st ex.s. c 90: See note following RCW 82.04.050.

Effective dates—Severability—1971 ex.s. c 299: See notes following RCW 82.04.050.

82.04.2907 Tax on royalties from granting intangible rights. (1) Upon every person engaging within this state in the business of receiving income from royalties or charges in the nature of royalties for the granting of intangible rights, such as copyrights, licenses, patents, or franchise fees, the amount of tax with respect to such business shall be equal to the gross income from royalties or charges in the nature of royalties from the business multiplied by the rate of 0.484 percent.

(2) For the purposes of this section, "royalties" means compensation for the use of intangible property, such as copyrights, patents, licenses, franchises, trademarks, trade names, and similar items. It does not include compensation for any natural resource, the licensing of prewritten computer software to the end user, or the licensing or use of digital goods, digital codes, or digital automated services. [2009 c 535 § 407; 2001 c 320 § 3; 1998 c 331 § 1.]

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Effective date—2001 c 320: See note following RCW 11.02.005.

Effective date—1998 c 331: "This act takes effect July 1, 1998." [1998 c 331 § 3.]

82.04.294 Tax on manufacturers or wholesalers of solar energy systems. ***(Expires June 30, 2014.)*** (1)(a) Beginning October 1, 2005, upon every person engaging within this state in the business of manufacturing solar energy systems using photovoltaic modules, or of manufacturing solar grade silicon to be used exclusively in components of such systems; as to such persons the amount of tax with respect to such business shall, in the case of manufacturers, be equal to the value of the product manufactured, or in the case of processors for hire, be equal to the gross income of the business, multiplied by the rate of 0.2904 percent.

(b) Beginning October 1, 2009, upon every person engaging within this state in the business of manufacturing solar energy systems using photovoltaic modules, or of manufacturing solar grade silicon, silicon solar wafers, silicon solar cells, thin film solar devices, or compound semiconductor solar wafers to be used exclusively in components of such systems; as to such persons the amount of tax with respect to such business is, in the case of manufacturers, equal to the value of the product manufactured, or in the case of processors for hire, equal to the gross income of the business, multiplied by the rate of 0.275 percent.

(2)(a) Beginning October 1, 2005, upon every person engaging within this state in the business of making sales at

wholesale of solar energy systems using photovoltaic modules, or of solar grade silicon to be used exclusively in components of such systems, manufactured by that person; as to such persons the amount of tax with respect to such business shall be equal to the gross proceeds of sales of the solar energy systems using photovoltaic modules, or of the solar grade silicon to be used exclusively in components of such systems, multiplied by the rate of 0.2904 percent.

(b) Beginning October 1, 2009, upon every person engaging within this state in the business of making sales at wholesale of solar energy systems using photovoltaic modules, or of solar grade silicon, silicon solar wafers, silicon solar cells, thin film solar devices, or compound semiconductor solar wafers to be used exclusively in components of such systems, manufactured by that person; as to such persons the amount of tax with respect to such business is equal to the gross proceeds of sales of the solar energy systems using photovoltaic modules, or of the solar grade silicon to be used exclusively in components of such systems, multiplied by the rate of 0.275 percent.

(3) Beginning October 1, 2009, silicon solar wafers, silicon solar cells, thin film solar devices, or compound semiconductor solar wafers are "semiconductor materials" for the purposes of RCW 82.08.9651 and 82.12.9651.

(4) The definitions in this subsection apply throughout this section.

(a) "Compound semiconductor solar wafers" means a semiconductor solar wafer composed of elements from two or more different groups of the periodic table.

(b) "Module" means the smallest nondivisible self-contained physical structure housing interconnected photovoltaic cells and providing a single direct current electrical output.

(c) "Photovoltaic cell" means a device that converts light directly into electricity without moving parts.

(d) "Silicon solar cells" means a photovoltaic cell manufactured from a silicon solar wafer.

(e) "Silicon solar wafers" means a silicon wafer manufactured for solar conversion purposes.

(f) "Solar energy system" means any device or combination of devices or elements that rely upon direct sunlight as an energy source for use in the generation of electricity.

(g) "Solar grade silicon" means high-purity silicon used exclusively in components of solar energy systems using photovoltaic modules to capture direct sunlight. "Solar grade silicon" does not include silicon used in semiconductors.

(h) "Thin film solar devices" means a nonparticipating substrate on which various semiconducting materials are deposited to produce a photovoltaic cell that is used to generate electricity.

(5) This section expires June 30, 2014. [2009 c 469 § 501; 2007 c 54 § 8; 2005 c 301 § 2.]

Effective date—2009 c 469: See note following RCW 82.08.962.

Severability—2007 c 54: See note following RCW 82.04.050.

Findings—Intent—2005 c 301: "The legislature finds that the welfare of the people of the state of Washington is positively impacted through the encouragement and expansion of key growth industries in the state. The legislature further finds that targeting tax incentives to focus on key growth industries is an important strategy to enhance the state's business climate.

A recent report by the Washington State University energy program recognized the solar electric industry as one of the state's important growth industries. It is of great concern that businesses in this industry have been increasingly expanding and relocating their operations elsewhere. The report indicates that additional incentives for the solar electric industry are needed in recognition of the unique forces and issues involved in business decisions in this industry.

Therefore, the legislature intends to enact comprehensive tax incentives for the solar electric industry that address activities of the manufacture of these products and to encourage these industries to locate in Washington. Tax incentives for the solar electric industry are important in both retention and expansion of existing business and attraction of new businesses, all of which will strengthen this growth industry within our state, will create jobs, and will bring many indirect benefits to the state." [2005 c 301 § 1.]

Effective date—2005 c 301: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2005." [2005 c 301 § 6.]

Report to legislature—2005 c 301: "(1) Using existing sources of information, the department shall report to the house appropriations committee, the house committee dealing with energy issues, the senate committee on ways and means, and the senate committee dealing with energy issues by December 1, 2013. The report shall measure the impacts of this act, including the total number of solar energy system manufacturing companies in the state, any change in the number of solar energy system manufacturing companies in the state, and, where relevant, the effect on job creation, the number of jobs created for Washington residents, and any other factors the department selects.

(2) The department shall not conduct any new surveys to provide the report in subsection (1) of this section." [2005 c 301 § 5.]

Annual report: RCW 82.32.620.

82.04.297 Internet access—Definitions. (1) The provision of internet access is subject to tax under RCW 82.04.290(2).

(2) "Internet" and "internet access" have the same meaning as those terms are defined in the federal internet tax freedom act, Title 47 U.S.C. Sec. 151 note, as existing on July 1, 2009.

(3) Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter. [2009 c 535 § 408; 2000 c 103 § 5; 1997 c 304 § 4.]

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Findings—Severability—Effective date—1997 c 304: See notes following RCW 35.21.717.

82.04.363 Exemptions—Camp or conference center—Items sold or furnished by nonprofit organization. This chapter does not apply to amounts received by a nonprofit organization from the sale or furnishing of the following items at a camp or conference center conducted on property exempt from property tax under RCW 84.36.030 (1), (2), or (3):

(1) Lodging, conference and meeting rooms, camping facilities, parking, and similar licenses to use real property;

(2) Food and meals;

(3) Books, tapes, and other products, including books and other products that are transferred electronically, that are available exclusively to the participants at the camp, conference, or meeting and are not available to the public at large. [2009 c 535 § 409; 1997 c 388 § 1.]

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Effective date—1997 c 388: "This act takes effect October 1, 1997." [1997 c 388 § 3.]

82.04.4282 Deductions—Fees, dues, charges. In computing tax there may be deducted from the measure of tax

amounts derived from bona fide (1) initiation fees, (2) dues, (3) contributions, (4) donations, (5) tuition fees, (6) charges made by a nonprofit trade or professional organization for attending or occupying space at a trade show, convention, or educational seminar sponsored by the nonprofit trade or professional organization, which trade show, convention, or educational seminar is not open to the general public, (7) charges made for operation of privately operated kindergartens, and (8) endowment funds. This section may not be construed to exempt any person, association, or society from tax liability upon selling tangible personal property, digital goods, digital codes, or digital automated services, or upon providing facilities or other services for which a special charge is made to members or others. If dues are in exchange for any significant amount of goods or services rendered by the recipient thereof to members without any additional charge to the member, or if the dues are graduated upon the amount of goods or services rendered, the value of such goods or services shall not be considered as a deduction under this section. [2009 c 535 § 410; 1994 c 124 § 3; 1989 c 392 § 1; 1980 c 37 § 3. Formerly RCW 82.04.430(2).]

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Intent—1980 c 37: See note following RCW 82.04.4281.

82.04.433 Deductions—Sales of fuel for consumption outside United States' waters by vessels in foreign commerce. (1) In computing tax there may be deducted from the measure of tax imposed under RCW 82.04.250 and 82.04.270 amounts derived from sales of fuel for consumption outside the territorial waters of the United States, by vessels used primarily in foreign commerce.

(2) The deduction in subsection (1) of this section does not apply with respect to the tax imposed under RCW 82.04.240, whether the value of the fuel under that tax is measured by the gross proceeds derived from the sale thereof or otherwise under RCW 82.04.450. [2009 c 494 § 2; 1985 c 471 § 16.]

Intent—Finding—2009 c 494: "(1) Through this act the legislature intends to address the taxation of persons manufacturing and/or selling bunker fuel. Bunker fuel is fuel intended for consumption outside the waters of the United States by vessels in foreign commerce. Although the state has historically collected tax from bunker fuel manufacturers, recently questions have arisen whether the manufacture of bunker fuel is subject to business and occupation tax under RCW 82.04.240. Pursuant to this act, the activity is taxable under RCW 82.04.240.

(2) The legislature finds that at the time the deduction allowed under RCW 82.04.433 was enacted in 1985, it was intended to apply only to the wholesaling or retailing of bunker fuel. In 1987 the legislature enacted the multiple activities tax credit in RCW 82.04.440. Enactment of the multiple activities tax credit resulted in changed tax liability for certain taxpayers. In particular, some taxpayers that engaged in activities that had been exempt under the prior multiple activities exemption became subject to tax on manufacturing activities upon enactment of the multiple activities tax credit in its place. The manufacturing of bunker fuel is one such activity." [2009 c 494 § 1.]

Administration—2009 c 494: "The department of revenue must take any actions that are necessary to ensure that its rules and other interpretive statements are consistent with this act." [2009 c 494 § 3.]

Application—2009 c 494: "This act applies both prospectively and retroactively." [2009 c 494 § 4.]

Effective date—2009 c 494: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 14, 2009]." [2009 c 494 § 6.]

Severability—Effective date—1985 c 471: See notes following RCW 82.04.260.

82.04.44525 Credit—New employment for international service activities in eligible areas—Designation of census tracts for eligibility—Records—Tax due upon ineligibility—Interest assessment—Information from employment security department. (1) Subject to the limits in this section, an eligible person is allowed a credit against the tax due under this chapter. The credit is based on qualified employment positions in eligible areas. The credit is available to persons who are engaged in international services as defined in this section. In order to receive the credit, the international service activities must take place at a business within the eligible area.

(2)(a) The credit shall equal three thousand dollars for each qualified employment position created after July 1, 1998, in an eligible area. A credit is earned for the calendar year the person is hired to fill the position, plus the four subsequent consecutive years, if the position is maintained for those four years.

(b) Credit may not be taken for hiring of persons into positions that exist on July 1, 1998. Credit is authorized for new employees hired for new positions created after July 1, 1998. New positions filled by existing employees are eligible for the credit under this section only if the position vacated by the existing employee is filled by a new hire.

(c) When a position is newly created, if it is filled before July 1st, this position is eligible for the full yearly credit. If it is filled after June 30th, this position is eligible for half of the credit.

(d) Credit may be accrued and carried over until it is used. No refunds may be granted for credits under this section.

(3) For the purposes of this section:

(a) "Eligible area" means: (i) A community empowerment zone under RCW 43.31C.020; or (ii) a contiguous group of census tracts that meets the unemployment and poverty criteria of RCW 43.31C.030 and is designated under subsection (4) of this section;

(b) "Eligible person" means a person, as defined in RCW 82.04.030, who in an eligible area at a specific location is engaged in the business of providing international services;

(c)(i) "International services" means the provision of a service, as defined under (c)(iii) of this subsection, that is subject to tax under RCW 82.04.290 (2) or (3), and either:

(A) Is for a person domiciled outside the United States; or

(B) The service itself is for use primarily outside of the United States.

(ii) "International services" excludes any service taxable under RCW 82.04.290(1).

(iii) Eligible services are: Computer; data processing; information; legal; accounting and tax preparation; engineering; architectural; business consulting; business management; public relations and advertising; surveying; geological consulting; real estate appraisal; or financial services. For the purposes of this section these services mean the following:

(A) "Computer services" are services such as computer programming, custom software modification, customization of canned software, custom software installation, custom

software maintenance, custom software repair, training in the use of software, computer systems design, and custom software update services;

(B) "Data processing services" are services such as word processing, data entry, data retrieval, data search, information compilation, payroll processing, business accounts processing, data production, and other computerized data and information storage or manipulation. "Data processing services" also includes the use of a computer or computer time for data processing whether the processing is performed by the provider of the computer or by the purchaser or other beneficiary of the service;

(C) "Information services" are services such as electronic data retrieval or research that entails furnishing financial or legal information, data or research, internet access as defined in RCW 82.04.297, general or specialized news, or current information;

(D) "Legal services" are services such as representation by an attorney, or other person when permitted, in an administrative or legal proceeding, legal drafting, paralegal services, legal research services, and court reporting services, arbitration, and mediation services;

(E) "Accounting and tax preparation services" are services such as accounting, auditing, actuarial, bookkeeping, or tax preparation services;

(F) "Engineering services" are services such as civil, electrical, mechanical, petroleum, marine, nuclear, and design engineering, machine designing, machine tool designing, and sewage disposal system designing services;

(G) "Architectural services" are services such as structural or landscape design or architecture, interior design, building design, building program management, and space planning services;

(H) "Business consulting services" are services such as primarily providing operating counsel, advice, or assistance to the management or owner of any business, private, nonprofit, or public organization, including but not limited to those in the following areas: Administrative management consulting; general management consulting; human resource consulting or training; management engineering consulting; management information systems consulting; manufacturing management consulting; marketing consulting; operations research consulting; personnel management consulting; physical distribution consulting; site location consulting; economic consulting; motel, hotel, and resort consulting; restaurant consulting; government affairs consulting; and lobbying;

(I) "Business management services" are services such as administrative management, business management, and office management. "Business management services" does not include property management or property leasing, motel, hotel, and resort management, or automobile parking management;

(J) "Public relations and advertising services" are services such as layout, art direction, graphic design, copy writing, mechanical preparation, opinion research, marketing research, marketing, or production supervision;

(K) "Surveying services" are services such as land surveying;

(L) "Geological consulting services" are services rendered for the oil, gas, and mining industry and other earth resource industries, and other services such as soil testing;

(M) "Real estate appraisal services" are services such as market appraisal and other real estate valuation; and

(N) "Financial services" are services such as banking, loan, security, investment management, investment advisory, mortgage servicing, contract collection, and finance leasing services, engaged in by financial businesses, or businesses similar to or in competition with financial businesses; and

(d) "Qualified employment position" means a permanent full-time position to provide international services. If an employee is either voluntarily or involuntarily separated from employment, the employment position is considered filled on a full-time basis if the employer is either training or actively recruiting a replacement employee.

(4) By ordinance, the legislative authority of a city, or legislative authorities of contiguous cities by ordinance of each city's legislative authority, with population greater than eighty thousand, located in a county containing no community empowerment zones as designated under RCW 43.31C.020, may designate a contiguous group of census tracts within the city or cities as an eligible area under this section. Each of the census tracts must meet the unemployment and poverty criteria of RCW 43.31C.030. Upon making the designation, the city or cities shall transmit to the department of revenue a certification letter and a map, each explicitly describing the boundaries of the census tract. This designation must be made by December 31, 1998.

(5) No application is necessary for the tax credit. The person must keep records necessary for the department to verify eligibility under this section. This information includes:

(a) Employment records for the previous six years;

(b) Information relating to description of international service activity engaged in at the eligible location by the person; and

(c) Information relating to customers of international service activity engaged in at that location by the person.

(6) If at any time the department finds that a person is not eligible for tax credit under this section, the amount of taxes for which a credit has been used shall be immediately due. The department shall assess interest, but not penalties, on the credited taxes for which the person is not eligible. The interest shall be assessed at the rate provided for delinquent excise taxes under chapter 82.32 RCW, shall be assessed retroactively to the date the tax credit was taken, and shall accrue until the taxes for which a credit has been used are repaid.

(7) The employment security department shall provide to the department of revenue such information needed by the department of revenue to verify eligibility under this section. [2009 c 535 § 1104; 2008 c 81 § 9; 1998 c 313 § 2.]

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Findings—Savings—Effective date—2008 c 81: See notes following RCW 82.08.975.

Intent—Findings—1998 c 313: "It is the intent of the legislature to attract and retain businesses that provide professional services and insurance services to international customers. To that end, the legislature finds that an incentive measured by a business's growth in jobs is a meaningful method of attracting and retaining such businesses. Therefore, the incentive in this act is specifically targeted at "net new jobs." In addition, to further the impact

and benefit of this program, this incentive is limited to those urban areas of the state, both in eastern Washington and western Washington, that are characterized by unemployment and poverty. The legislature finds that providing this targeted incentive will be of benefit to the state as a whole." [1998 c 313 § 1.]

Effective date—1998 c 313: "This act takes effect July 1, 1998." [1998 c 313 § 4.]

82.04.449 Credit—Washington customized employment training program. In computing the tax imposed under this chapter, a credit is allowed for participants in the Washington customized employment training program created in RCW 28B.67.020. The credit allowed under this section is equal to fifty percent of the value of a participant's payments to the employment training finance account created in RCW 28B.67.030. If a participant in the program does not meet the requirements of RCW 28B.67.020(2)(b)(ii), the participant must remit to the department the value of any credits taken plus interest. The credit earned by a participant in one calendar year may be carried over to be credited against taxes incurred in a subsequent calendar year. No credit may be allowed for repayment of training allowances received from the Washington customized employment training program on or after July 1, 2016. [2009 c 296 § 3; 2006 c 112 § 5.]

Severability—2006 c 112: See RCW 28B.67.901.

82.04.4494 Credit—Forest derived biomass. ***(Expires June 30, 2015.)*** (1) In computing the tax imposed under this chapter, harvesters are allowed a credit against the amount of tax otherwise due under this chapter, as provided in this section. The credit per harvested green ton of forest derived biomass sold, transferred, or used for production of electricity, steam, heat, or biofuel is as follows:

(a) For forest derived biomass harvested October 1, 2009, through June 30, 2010, zero dollars;

(b) For forest derived biomass harvested July 1, 2010, through June 30, 2013, three dollars;

(c) For forest derived biomass harvested July 1, 2013, through June 30, 2015, five dollars.

(2) Credit may not be claimed for forest derived biomass sold, transferred, or used before July 1, 2009. The amount of credit allowed for a reporting period may not exceed the tax otherwise due under this chapter for that reporting period. Any unused excess credit in a reporting period may be carried forward to future reporting periods for a maximum of two years.

(3) For the purposes of this section, "harvested" and "harvesters" are defined in RCW 84.33.035, and "biofuel" is defined in RCW 43.325.010.

(4) This section expires June 30, 2015. [2009 c 469 § 401.]

Effective date—2009 c 469: See note following RCW 82.08.962.

82.04.470 Resale certificate—Burden of proof—Tax liability—Rules—Resale certificate defined ***(as amended by 2009 c 535).*** (1) Unless a seller has taken from the buyer a resale certificate, the burden of proving that a sale ((~~of tangible personal property, or of services, was not a sale at retail shall be~~)) is a wholesale sale rather than a retail sale is upon the person who made it.

(2) If a seller does not receive a resale certificate at the time of the sale, have a resale certificate on file at the time of the sale, or obtain a resale certificate from the buyer within a reasonable time after the sale, the seller shall remain liable for the tax as provided in RCW 82.08.050, unless the seller can demonstrate facts and circumstances according to rules adopted by the department of revenue that show the sale was properly made without payment of sales tax.

(3) The department may provide by rule for suggested forms for resale certificates or equivalent documents containing the information that will be accepted as resale certificates. The department shall provide by rule the categories of items or services that must be specified on resale certificates and the business classifications that may use a blanket resale certificate.

(4) As used in this section, "resale certificate" means documentation provided by a buyer to a seller stating that the purchase is for resale in the regular course of business, or that the buyer is exempt from retail sales tax, and containing the following information:

(a) The name and address of the buyer;

(b) The uniform business identifier or revenue registration number of the buyer, if the buyer is required to be registered;

(c) The type of business engaged in;

(d) The categories of items or services to be purchased for resale or that are exempt, unless the buyer presents a blanket resale certificate;

(e) The date on which the certificate was provided;

(f) A statement that the items or services purchased either: (i) Are purchased for resale in the regular course of business; or (ii) are exempt from tax pursuant to statute;

(g) A statement that the buyer acknowledges that the buyer is solely responsible for purchasing within the categories specified on the certificate and that misuse of the resale or exemption privilege claimed on the certificate subjects the buyer to a penalty of fifty percent of the tax due, in addition to the tax, interest, and any other penalties imposed by law;

(h) The name of the individual authorized to sign the certificate, printed in a legible fashion;

(i) The signature of the authorized individual; and

(j) The name of the seller.

(5) Subsection (4)(h), (i), and (j) of this section does not apply if the certificate is provided in a format other than paper. If the certificate is provided in a format other than paper, the name of the individual providing the certificate must be included in the certificate. [2009 c 535 § 411; 2007 c 6 § 1201; 2003 c 168 § 204; 1993 sp.s. c 25 § 701; 1983 2nd ex.s. c 3 § 29; 1975 1st ex.s. c 278 § 43; 1961 c 15 § 82.04.470. Prior: 1935 c 180 § 9; RRS § 8370-9.]

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

82.04.470 Seller's permit—Burden of proof—Tax liability—Rules—Seller's permit defined ***(as amended by 2009 c 563). (Effective January 1, 2010.)*** (1) Unless a seller has taken from the buyer a ((~~resale certificate~~)) seller's permit, the burden of proving that a sale of tangible personal property, extended warranty, or of services, was not a sale at retail shall be upon the person who made it.

(2) If a seller does not receive a ((~~resale certificate~~)) seller's permit at the time of the sale, have a ((~~resale certificate~~)) seller's permit on file at the time of the sale, or obtain a ((~~resale certificate~~)) seller's permit from the buyer within a reasonable time after the sale, the seller shall remain liable for the tax as provided in RCW 82.08.050, unless the seller can demonstrate facts and circumstances according to rules adopted by the department ((~~of revenue~~)) that show the sale was properly made without payment of retail sales tax.

(3) ((~~The department may provide by rule for suggested forms for resale certificates or equivalent documents containing the information that will be accepted as resale certificates. The department shall provide by rule the categories of items or services that must be specified on resale certificates and the business classifications that may use a blanket resale certificate.~~

~~(4) As used in this section, "resale certificate" means documentation provided by a buyer to a seller stating that the purchase is for resale in the regular course of business, or that the buyer is exempt from retail sales tax, and containing the following information~~)) A seller's permit must contain such information as required by the department, which may include, but is not limited to:

(a) The name and address of the buyer;

(b) The ((~~uniform business identifier or revenue registration number of the buyer, if the buyer is required to be registered~~)) seller's permit number issued by the department;

(c) The type of business engaged in;

(d) The categories of items or services to be purchased for resale or that are ((~~exempt~~)) otherwise to be purchased at wholesale, unless the buyer presents a blanket ((~~resale certificate~~)) seller's permit;

(e) The date on which the ((~~certificate~~)) permit was provided to the seller;

(f) A statement that the items or services purchased either: (i) Are purchased for resale in the regular course of business; or (ii) are ((~~exempt from tax pursuant to statute~~)) otherwise purchased at wholesale;

(g) A statement that the buyer acknowledges that the buyer is solely responsible for purchasing within the categories specified on the ((~~certificate~~)) permit and that misuse of the resale ((~~or exemption~~)) privilege claimed on the ((~~certificate~~)) permit subjects the buyer to ((~~a penalty of fifty percent of the tax due~~)) revocation of the seller's permit, penalties as provided in RCW 82.32.290 and 82.32.291, in addition to the tax, interest, and any other penalties imposed by law;

(h) The name of the individual authorized to sign the ((~~certificate~~)) permit, printed in a legible fashion;

(i) The signature of the authorized individual; ((~~and~~))

(j) The name of the seller;

(k) The date the permit was issued, renewed, or reinstated by the department;

(l) The date that the permit expires;

(m) Instructions for renewing the permit; and

(n) A statement that the department is authorized to obtain information concerning the buyer's purchase of items or services under the permit from the seller to verify whether the buyer was authorized to purchase such items or services without payment of retail sales tax.

(((~~(5)~~))) (4) Subsection (((~~(4)~~))) (3)(h)((~~,~~)) and (i)((~~, and (j)~~)) of this section does not apply if the ((~~certificate~~)) permit is provided in a format other than paper. If the ((~~certificate~~)) permit is provided in a format other than paper, the name of the individual providing the ((~~certificate~~)) permit must be included in the ((~~certificate~~)) permit.

(5)(a) In lieu of a seller's permit issued by the department under RCW 82.32.780 or 82.32.783, a seller may accept from a buyer that is not required to be registered with the department under RCW 82.32.030 a properly completed:

(i) Uniform sales and use tax exemption certificate developed by the multistate tax commission; or

(ii) Uniform exemption certificate approved by the streamlined sales and use tax agreement governing board.

(b) A seller who accepts a properly completed exemption certificate as authorized in (a) of this subsection is relieved of the obligation to collect and remit retail sales tax.

(6) In lieu of a seller's permit issued by the department under RCW 82.32.780 or 82.32.783, a seller may accept from a buyer that is required to be registered with the department under RCW 82.32.030 a properly completed uniform exemption certificate approved by the streamlined sales and use tax agreement governing board as long as that certificate includes the seller's permit number issued by the department to the buyer.

(7) As used in this section, "seller's permit" means documentation issued by the department under RCW 82.32.780 or 82.32.783 and provided by a buyer to a seller to substantiate a wholesale sale. [2009 c 563 § 205; 2007 c 6 § 1201; 2003 c 168 § 204; 1993 sp.s. c 25 § 701; 1983 2nd ex.s. c 3 § 29; 1975 1st ex.s. c 278 § 43; 1961 c 15 § 82.04.470. Prior: 1935 c 180 § 9; RRS § 8370-9.]

Reviser's note: RCW 82.04.470 was amended twice during the 2009 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

Finding—Intent—Construction—Effective date—Reports and recommendations—2009 c 563: See notes following RCW 82.32.780.

Part headings not law—Savings—Effective date—Severability—2007 c 6: See notes following RCW 82.32.020.

Findings—Intent—2007 c 6: See note following RCW 82.14.495.

Effective dates—Part headings not law—2003 c 168: See notes following RCW 82.08.010.

Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25: See notes following RCW 82.04.230.

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

Resale certificates: RCW 82.08.130 and 82.32.291.

82.04.480 Sales in own name—Sales as agent. (1) Every consignee, bailee, factor, or auctioneer having either actual or constructive possession of personal property, or having possession of the documents of title thereto, with power to sell such personal property in that person's own name and actually so selling, is deemed the seller of such personal property within the meaning of this chapter. Furthermore, the consignor, bailor, principal, or owner is deemed a seller of such property to the consignee, bailee, factor, or auctioneer.

(2) The burden is on the taxpayer in every case to establish the fact that the taxpayer is not engaged in the business of making retail sales or wholesale sales but is acting merely as broker or agent in promoting sales for a principal. Such claim will be allowed only when the taxpayer's accounting records are kept in such manner as required by rule by the department.

(3) For purposes of this section, "personal property" means tangible personal property, digital goods, digital codes, and extended warranties. [2009 c 535 § 412; 1975 1st ex.s. c 278 § 44; 1961 c 15 § 82.04.480. Prior: 1935 c 180 § 10; RRS § 8370-10.]

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

82.04.635 Exemptions—Nonprofits providing legal services to low-income persons. This chapter does not apply to nonprofit organizations primarily engaged in the provision of legal services to low-income individuals from whom no charge for services is collected. For the purpose of this section, "nonprofit" means an organization exempt from federal income tax under Title 26 U.S.C. Sec. 501(c) of the federal internal revenue code. [2009 c 508 § 1.]

Chapter 82.08 RCW
RETAIL SALES TAX

Sections

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82.08.816 Exemptions—Electric vehicle batteries and infrastructure. *(Expires January 1, 2020.)*
82.08.890 Exemptions—Qualifying livestock nutrient management equipment and facilities.
82.08.956 Exemptions—Hog fuel used to generate electricity, steam, heat, or biofuel. *(Expires June 30, 2013.)*
82.08.957 Exemptions—Forest derived biomass. *(*Expires June 30, 2013.)
82.08.962 Exemptions—Sales of machinery and equipment used in generating electricity. *(Expires July 1, 2013.)*
82.08.963 Exemptions—Sales of machinery and equipment using solar energy to generate electricity. *(Expires June 30, 2013.)*
82.08.9651 Exemptions—Gases and chemicals used in production of semiconductor materials. *(Expires December 1, 2018.)*
82.08.995 Exemptions—Certain limited purpose public corporations, commissions, and authorities.

82.08.010 Definitions. For the purposes of this chapter:

(1)(a) "Selling price" includes "sales price." "Sales price" means the total amount of consideration, except separately stated trade-in property of like kind, including cash, credit, property, and services, for which tangible personal property, extended warranties, digital goods, digital codes, digital automated services, or other services defined as a "retail sale" under RCW 82.04.050 are sold, leased, or rented, valued in money, whether received in money or otherwise. No deduction from the total amount of consideration is allowed for the following: (i) The seller's cost of the property sold; (ii) the cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller; (iii) charges by the seller for any services necessary to complete the sale, other than delivery and installation charges; (iv) delivery charges; and (v) installation charges.

When tangible personal property is rented or leased under circumstances that the consideration paid does not represent a reasonable rental for the use of the articles so rented or leased, the "selling price" shall be determined as nearly as possible according to the value of such use at the places of use of similar products of like quality and character under such rules as the department may prescribe;

(b) "Selling price" or "sales price" does not include: Discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale; interest, financing, and carrying charges from credit extended on the sale of tangible personal property, extended warranties, digital goods, digital codes, digital automated services, or other services, if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser; and any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the purchaser;

(c) "Selling price" or "sales price" includes consideration received by the seller from a third party if:

(i) The seller actually receives consideration from a party other than the purchaser, and the consideration is directly related to a price reduction or discount on the sale;

(ii) The seller has an obligation to pass the price reduction or discount through to the purchaser;

(iii) The amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser; and

(iv) One of the criteria in this subsection (1)(c)(iv) is met:

(A) The purchaser presents a coupon, certificate, or other documentation to the seller to claim a price reduction or discount where the coupon, certificate, or documentation is authorized, distributed, or granted by a third party with the understanding that the third party will reimburse any seller to whom the coupon, certificate, or documentation is presented;

(B) The purchaser identifies himself or herself to the seller as a member of a group or organization entitled to a price reduction or discount, however a "preferred customer" card that is available to any patron does not constitute membership in such a group; or

(C) The price reduction or discount is identified as a third party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate, or other documentation presented by the purchaser;

(2)(a) "Seller" means every person, including the state and its departments and institutions, making sales at retail or retail sales to a buyer, purchaser, or consumer, whether as agent, broker, or principal, except "seller" does not mean:

(i) The state and its departments and institutions when making sales to the state and its departments and institutions; or

(ii) A professional employer organization when a covered employee coemployed with the client under the terms of a professional employer agreement engages in activities that constitute a sale at retail that is subject to the tax imposed by this chapter. In such cases, the client, and not the professional employer organization, is deemed to be the seller and is responsible for collecting and remitting the tax imposed by this chapter.

(b) For the purposes of (a) of this subsection, the terms "client," "covered employee," "professional employer agreement," and "professional employer organization" have the same meanings as in RCW 82.04.540;

(3) "Buyer," "purchaser," and "consumer" include, without limiting the scope hereof, every individual, receiver, assignee, trustee in bankruptcy, trust, estate, firm, copartner-

ship, joint venture, club, company, joint stock company, business trust, corporation, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise, municipal corporation, quasi municipal corporation, and also the state, its departments and institutions and all political subdivisions thereof, irrespective of the nature of the activities engaged in or functions performed, and also the United States or any instrumentality thereof;

(4) "Delivery charges" means charges by the seller of personal property or services for preparation and delivery to a location designated by the purchaser of personal property or services including, but not limited to, transportation, shipping, postage, handling, crating, and packing;

(5) "Direct mail" means printed material delivered or distributed by United States mail or other delivery service to a mass audience or to addressees on a mailing list provided by the purchaser or at the direction of the purchaser when the cost of the items are not billed directly to the recipients. "Direct mail" includes tangible personal property supplied directly or indirectly by the purchaser to the direct mail seller for inclusion in the package containing the printed material. "Direct mail" does not include multiple items of printed material delivered to a single address;

(6) The meaning attributed in chapter 82.04 RCW to the terms "tax year," "taxable year," "person," "company," "sale," "sale at retail," "retail sale," "sale at wholesale," "wholesale," "business," "engaging in business," "cash discount," "successor," "consumer," "in this state" and "within this state" shall apply equally to the provisions of this chapter;

(7) For the purposes of the taxes imposed under this chapter and under chapter 82.12 RCW, "tangible personal property" means personal property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses. Tangible personal property includes electricity, water, gas, steam, and prewritten computer software;

(8) "Extended warranty" has the same meaning as in RCW 82.04.050(7);

(9) The definitions in RCW 82.04.192 apply to this chapter; and

(10) For the purposes of the taxes imposed under this chapter and chapter 82.12 RCW, whenever the terms "property" or "personal property" are used, those terms must be construed to include digital goods and digital codes unless:

(a) It is clear from the context that the term "personal property" is intended only to refer to tangible personal property;

(b) It is clear from the context that the term "property" is intended only to refer to tangible personal property, real property, or both; or

(c) To construe the term "property" or "personal property" as including digital goods and digital codes would yield unlikely, absurd, or strained consequences. [2009 c 535 § 303; 2007 c 6 § 1302; (2007 c 6 § 1301 expired July 1, 2008); 2006 c 301 § 2; 2005 c 514 § 110; 2004 c 153 § 406; 2003 c 168 § 101; 1985 c 38 § 3; 1985 c 2 § 2 (Initiative Measure No. 464, approved November 6, 1984); 1983 1st ex.s. c 55 § 1; 1967 ex.s. c 149 § 18; 1963 c 244 § 1; 1961 c 15 § 82.08.010. Prior: (i) 1945 c 249 § 4; 1943 c 156 § 6; 1941 c 178 § 8; 1939 c 225 § 7; 1935 c 180 § 17; Rem. Supp. 1945 § 8370-17. (ii) 1935 c 180 § 20; RRS § 8370-20.]

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Part headings not law—Savings—Effective date—Severability—2007 c 6: See notes following RCW 82.32.020.

Findings—Intent—2007 c 6: See note following RCW 82.14.495.

Expiration date—2007 c 6 § 1301: "Section 1301 of this act expires July 1, 2008." [2007 c 6 § 1706.]

Effective date—Act does not affect application of Title 50 or 51 RCW—2006 c 301: See notes following RCW 82.32.710.

Effective date—2005 c 514: See note following RCW 82.04.4272.

Part headings not law—Severability—2005 c 514: See notes following RCW 82.12.808.

Retroactive effective date—Effective date—2004 c 153: See note following RCW 82.08.0293.

Effective dates—2003 c 168: "Sections 101 through 104, 201 through 216, 401 through 412, 501, 502, 601 through 604, 701 through 704, 801, 901, and 902 of this act take effect July 1, 2004. Sections 301 through 305 of this act take effect January 1, 2004." [2003 c 168 § 903.]

Part headings not law—2003 c 168: "Part headings used in this act are not any part of the law." [2003 c 168 § 901.]

Purpose—1985 c 2: "The purpose of this initiative is to reduce the amount on which sales tax is paid by excluding the trade-in value of certain property from the amount taxable." [1985 c 2 § 1 (Initiative Measure No. 464, approved November 6, 1984).]

Effective dates—1983 1st ex.s. c 55: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1983, except that section 12 of this act shall take effect January 1, 1984, and shall be effective for property taxes levied in 1983, and due in 1984, and thereafter." [1983 1st ex.s. c 55 § 13.]

82.08.015 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. ***(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 189.]

82.08.020 Tax imposed—Retail sales—Retail car rental. ***(Effective until January 1, 2011.)*** (1) There is levied and there shall be collected a tax on each retail sale in this state equal to six and five-tenths percent of the selling price.

(2) There is levied and there shall be collected an additional tax on each retail car rental, regardless of whether the vehicle is licensed in this state, equal to five and nine-tenths percent of the selling price. The revenue collected under this subsection shall be deposited in the multimodal transportation account created in RCW 47.66.070.

(3) Beginning July 1, 2003, there is levied and collected an additional tax of three-tenths of one percent of the selling price on each retail sale of a motor vehicle in this state, other than retail car rentals taxed under subsection (2) of this section. The revenue collected under this subsection shall be deposited in the multimodal transportation account created in RCW 47.66.070.

(4) For purposes of subsection (3) of this section, "motor vehicle" has the meaning provided in RCW 46.04.320, but does not include farm tractors or farm vehicles as defined in RCW 46.04.180 and 46.04.181, off-road and nonhighway vehicles as defined in RCW 46.09.020, and snowmobiles as defined in RCW 46.10.010.

(5) Beginning on December 8, 2005, 0.16 percent of the taxes collected under subsection (1) of this section shall be dedicated to funding comprehensive performance audits required under RCW 43.09.470. The revenue identified in this subsection shall be deposited in the performance audits of government account created in RCW 43.09.475.

(6) The taxes imposed under this chapter shall apply to successive retail sales of the same property.

(7)(a) Until January 1, 2011, the tax imposed in subsection (3) of this section and the dedication of revenue provided for in subsection (5) of this section, do not apply with respect to the sales of new passenger cars, light duty trucks, and medium duty passenger vehicles, which utilize hybrid technology and have a United States environmental protection agency estimated highway gasoline mileage rating of at least forty miles per gallon.

(b) As used in this subsection, "hybrid technology" means propulsion units powered by both electricity and gasoline.

(8) The rates provided in this section apply to taxes imposed under chapter 82.12 RCW as provided in RCW 82.12.020. [2009 c 469 § 802; 2006 c 1 § 3 (Initiative Measure No. 900, approved November 8, 2005); 2003 c 361 § 301; 2000 2nd sp.s. c 4 § 1; 1998 c 321 § 36 (Referendum Bill No. 49, approved November 3, 1998); 1992 c 194 § 9; 1985 c 32 § 1. Prior: 1983 2nd ex.s. c 3 § 62; 1983 2nd ex.s. c 3 § 41; 1983 c 7 § 6; 1982 1st ex.s. c 35 § 1; 1981 2nd ex.s. c 8 § 1; 1977 ex.s. c 324 § 2; 1975-'76 2nd ex.s. c 130 § 1; 1971 ex.s. c 281 § 9; 1969 ex.s. c 262 § 31; 1967 ex.s. c 149 § 19; 1965 ex.s. c 173 § 13; 1961 c 293 § 6; 1961 c 15 § 82.08.020; prior: 1959 ex.s. c 3 § 5; 1955 ex.s. c 10 § 2; 1949 c 228 § 4; 1943 c 156 § 5; 1941 c 76 § 2; 1939 c 225 § 10; 1935 c 180 § 16; Rem. Supp. 1949 § 8370-16.]

Expiration date—2009 c 469 § 802: "Section 802 of this act expires January 1, 2011." [2009 c 469 § 904.]

Effective date—2009 c 469 §§ 801 and 802: "Sections 801 and 802 of this act take effect August 1, 2009." [2009 c 469 § 903.]

Short title—Effective date—2006 c 1 (Initiative Measure No. 900): See RCW 43.09.471.

Policies and purposes—Construction—Severability—Part headings not law—2006 c 1 (Initiative Measure No. 900): See notes following RCW 43.09.470.

Effective dates—2003 c 361: "Sections 301 through 602 of this act take effect July 1, 2003, and sections 201 and 202 of this act take effect August 1, 2003." [2003 c 361 § 703.]

Findings—Part headings not law—Severability—2003 c 361: See notes following RCW 82.36.025.

Application—2000 2nd sp.s. c 4 § 1: "Section 1 of this act applies to taxes collected on and after December 31, 1999." [2000 2nd sp.s. c 4 § 34.]

Effective date—2000 2nd sp.s. c 4 §§ 1-3, 20: "Sections 1 through 3 and 20 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [May 2, 2000]." [2000 2nd sp.s. c 4 § 35.]

Purpose—Severability—1998 c 321: See notes following RCW 82.14.045.

Contingent effective dates—1998 c 321 §§ 23-42: See note following RCW 35.58.410.

Legislative intent—1992 c 194: "The legislature intends to exempt rental cars from state and local motor vehicle excise taxes, and to impose additional sales and use taxes in lieu thereof. These additional sales and use taxes are intended to provide as much revenue to the funds currently receiving motor vehicle excise tax revenue, including the transportation funds and the general fund, as each fund would have received if the motor vehicle excise tax exemptions had not been enacted. Revenues from these additional sales and use taxes are intended to be distributed in the same manner as the motor vehicle excise tax revenues they replace." [1992 c 194 § 4.]

Effective dates—1992 c 194: See note following RCW 46.04.466.

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Construction—1983 c 7: "This act shall not be construed as affecting any existing right acquired, or liability or obligation incurred under the sections amended in this act, nor any rule, regulation, or order adopted, nor any proceeding instituted, under those sections." [1983 c 7 § 34.]

Severability—1983 c 7: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 c 7 § 35.]

Effective dates—1983 c 7: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect March 1, 1983, except as follows:

(1) Sections 9 through 22, and 25 through 31 of this act shall take effect June 30, 1983.

(2) Sections 23 and 24 of this act shall take effect January 1, 1984, for taxes first due in 1984 and thereafter.

The department of revenue and the department of licensing shall immediately take necessary steps to ensure that all sections of this act are properly implemented on their effective dates. The additional taxes and tax rate changes imposed under this act shall take effect on the dates designated in this act notwithstanding the date this act becomes law under Article III, section 12 of the state Constitution." [1983 c 7 § 37.]

Severability—1982 1st ex.s. c 35: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 1st ex.s. c 35 § 47.]

Effective dates—Expiration date—1982 1st ex.s. c 35: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately, except that sections 28, 29, and 30 of this act shall take effect on May 1, 1982, sections 33 and 34 of this act shall take effect on July 1, 1983, and sections 35 through 38 of this act shall take effect on January 1, 1983.

Sections 28 and 29 of this act shall expire on July 1, 1983. The additional taxes imposed under this act shall take effect on the dates designated in this act notwithstanding the date this act becomes law under Article III, section 12 of the state Constitution." [1982 1st ex.s. c 35 § 48.]

Effective date—1975-'76 2nd ex.s. c 130: "This 1976 amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately: PROVIDED, That the provisions of this 1976 amendatory act shall be null and void in the event chapter . . . (*Substitute Senate Bill No. 2778), Laws of 1975-'76 2nd ex. sess. is approved and becomes law." [1975-'76 2nd ex.s. c 130 § 4.]

***Reviser's note:** "Substitute Senate Bill No. 2778" failed to become law.

High capacity transportation systems—Sales and use tax: RCW 81.104.170.

Manufacturers, study: 1994 c 66.

82.08.0208 Exemptions—Digital codes. The tax imposed by RCW 82.08.020 does not apply to the sale of a digital code for one or more digital products if the sale of the digital products to which the digital code relates is exempt from the tax levied by RCW 82.08.020. [2009 c 535 § 501.]

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

82.08.02081 Exemptions—Audio or video programming. (1) Except as provided in subsection (2) of this section, the tax imposed by RCW 82.08.020 does not apply to sales of audio or video programming by a radio or television broadcaster.

(2)(a) Except as provided in (b) of this subsection, the exemption provided in subsection (1) of this section does not apply in respect to programming that is sold on a pay-per-program basis or that allows the buyer to access a library of programs at any time for a specific charge for that service.

(b) Notwithstanding (a) of this subsection, the exemption provided in this section applies to the sale of programming described in (a) of this subsection if the seller is subject to a franchise fee in this state under the authority of Title 47 U.S.C. Sec. 542(a) on the gross revenue derived from the sale.

(3) For purposes of this section, "radio or television broadcaster" includes satellite radio providers, satellite television providers, cable television providers, and providers of subscription internet television. [2009 c 535 § 502.]

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

82.08.02082 Exemptions—Digital products or services—Ingredient or component—Made available for free. (1) The tax imposed by RCW 82.08.020 does not apply to sales of digital goods, digital codes, digital automated services, or services defined as a retail sale in RCW 82.04.050(6)(b) for purposes of:

(a) Consuming the digital good, digital code, digital automated service, or service defined as a retail sale in RCW 82.04.050(6)(b) in producing for sale a new product, where the digital good, digital code, digital automated service, or service defined as a retail sale in RCW 82.04.050(6)(b) becomes an ingredient or component of the new product. A digital code becomes an ingredient or component of a new product if the digital good or digital automated service acquired through the use of the digital code becomes an ingredient or component of a new product; or

(b) Making the digital good or digital automated service, including a digital good or digital automated service acquired through the use of a digital code, or service defined as a retail sale in RCW 82.04.050(6)(b) available free of charge for the use or enjoyment of others.

(2) The exemption is available only when the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department. The seller must retain a copy of the certificate for the seller's files. [2009 c 535 § 503.]

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

82.08.02087 Exemptions—Standard digital information and services—Purchased for business purposes. (1) The tax imposed by RCW 82.08.020 does not apply to the sale to a business of standard digital information and services rendered in respect to standard digital information, where the standard digital information and services are purchased solely for business purposes.

(2) The exemption is available only when the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department. The seller must retain a copy of the certificate for the seller's files.

(3) For purposes of this section, the following definitions apply:

(a) "Business purposes" means any purpose relevant to the business needs of the taxpayer claiming an exemption under this section. Business purposes do not include any personal, family, or household purpose. The term also does not include any activity conducted by a government entity as that term is defined in RCW 7.25.005; and

(b) "Standard digital information" means a digital good consisting primarily of data, facts, or information, or any combination thereof, not generated or compiled for a specific client or customer. [2009 c 535 § 504.]

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

82.08.02088 Exemptions—Digital products—Business buyers—Concurrently available for use within and outside state. (1) The tax imposed by RCW 82.08.020 does not apply to the sale of digital goods, digital codes, digital automated services, prewritten computer software, or services defined as a retail sale in RCW 82.04.050(6)(b) to a buyer that provides the seller with an exemption certificate claiming multiple points of use. An exemption certificate claiming multiple points of use must be in a form and contain such information as required by the department.

(2) A buyer is entitled to use an exemption certificate claiming multiple points of use only if the buyer is a business or other organization and the digital goods or digital automated services purchased, or the digital goods or digital automated services to be obtained by the digital code purchased, or the prewritten computer software or services defined as a retail sale in RCW 82.04.050(6)(b) purchased will be concurrently available for use within and outside this state. A buyer is not entitled to use an exemption certificate claiming multiple points of use for digital goods, digital codes, digital automated services, prewritten computer software, or services defined as a retail sale in RCW 82.04.050(6)(b) purchased for personal use.

(3) A buyer claiming an exemption under this section must report and pay the tax imposed in RCW 82.12.020 and any local use taxes imposed under the authority of chapter 82.14 RCW and RCW 81.104.170 directly to the department in accordance with RCW 82.12.02088 and 82.14.457.

(4) For purposes of this section, "concurrently available for use within and outside this state" means that employees or other agents of the buyer may use the digital goods, digital automated services, prewritten computer software, or services defined as a retail sale in RCW 82.04.050(6)(b) simultaneously from one or more locations within this state and one or more locations outside this state. A digital code is

concurrently available for use within and outside this state if employees or other agents of the buyer may use the digital goods or digital automated services to be obtained by the code simultaneously at one or more locations within this state and one or more locations outside this state. [2009 c 535 § 701.]

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

82.08.02525 Exemptions—Sale of copied public records by state and local agencies. The tax levied by RCW 82.08.020 does not apply to the sale of public records by state and local agencies, as the terms are defined in RCW 42.17.020, that are copied or transferred electronically under a request for the record for which no fee is charged other than a statutorily set fee or a fee to reimburse the agency for its actual costs directly incident to the copying. A request for a record includes a request for a document not available to the public but available to those persons who by law are allowed access to the document, such as requests for fire reports, law enforcement reports, taxpayer information, and academic transcripts. [2009 c 535 § 505; 1996 c 63 § 1.]

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Effective date—1996 c 63: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect April 1, 1996." [1996 c 63 § 3.]

82.08.0253 Exemptions—Sale and distribution of newspapers. (1) The tax levied by RCW 82.08.020 does not apply to:

(a) The distribution and newsstand sale of printed newspapers; and

(b) The sale of newspapers transferred electronically, provided that the electronic version of a printed newspaper:

(i) Shares content with the printed newspaper; and

(ii) Is prominently identified by the same name as the printed newspaper or otherwise conspicuously indicates that it is a complement to the printed newspaper.

(2) For purposes of this section, "printed newspaper" means a publication issued regularly at stated intervals at least twice a month and printed on newsprint in tabloid or broadsheet format folded loosely together without stapling, glue, or any other binding of any kind, including any supplement of a printed newspaper. [2009 c 535 § 506; 1980 c 37 § 21. Formerly RCW 82.08.030(3).]

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Intent—1980 c 37: See note following RCW 82.04.4281.

82.08.02535 Exemptions—Sales and distribution of magazines or periodicals by subscription for fund-raising. The tax levied by RCW 82.08.020 does not apply to subscription sales of magazines or periodicals, including magazines and periodicals transferred electronically to the buyer, for the purposes of fund-raising by (1) educational institutions as defined in RCW 82.04.170, or (2) nonprofit organizations engaged in activities primarily for the benefit of boys and girls nineteen years and younger. [2009 c 535 § 507; 1995 2nd sp.s. c 8 § 1.]

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Effective date—1995 2nd sp.s. c 8: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 2nd sp.s. c 8 § 2.]

82.08.02537 Exemptions—Sales of academic transcripts. The tax levied by RCW 82.08.020 does not apply to sales of academic transcripts by educational institutions, including academic transcripts transferred electronically. [2009 c 535 § 508; 1996 c 272 § 2.]

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Effective date—1996 c 272: See note following RCW 82.04.399.

82.08.0256 Exemptions—Sale of the operating property of a public utility to the state or a political subdivision. The tax levied by RCW 82.08.020 does not apply to sales (including transfers of title through decree of appropriation) heretofore or hereafter made of the entire operating property of a publicly or privately owned public utility, or of a complete operating integral section thereof, to the state or a political subdivision thereof for use in conducting any business defined in *RCW 82.16.010 (1), (2), (3), (4), (5), (6), (7), (8), (9), (10) or (11). For purposes of this section, "operating property" includes digital goods and digital codes. [2009 c 535 § 509; 1980 c 37 § 24. Formerly RCW 82.08.030(6).]

***Reviser's note:** RCW 82.16.010 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsections (1), (2), (3), (4), (5), (6), (7), (8), (9), and (10) to subsections (8), (1), (9), (13), (4), (10), (2), (6), (12), and (7), respectively.

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Intent—1980 c 37: See note following RCW 82.04.4281.

82.08.02565 Exemptions—Sales of machinery and equipment for manufacturing, research and development, or a testing operation—Labor and services for installation—Exemption certificate—Rules. (1) The tax levied by RCW 82.08.020 does not apply to sales to a manufacturer or processor for hire of machinery and equipment used directly in a manufacturing operation or research and development operation, to sales to a person engaged in testing for a manufacturer or processor for hire of machinery and equipment used directly in a testing operation, or to sales of or charges made for labor and services rendered in respect to installing, repairing, cleaning, altering, or improving the machinery and equipment, but only when the purchaser provides the seller with an exemption certificate in a form and manner prescribed by the department by rule. The seller must retain a copy of the certificate for the seller's files.

(2) For purposes of this section and RCW 82.12.02565:

(a) "Machinery and equipment" means industrial fixtures, devices, and support facilities, and tangible personal property that becomes an ingredient or component thereof, including repair parts and replacement parts. "Machinery and equipment" includes pollution control equipment installed and used in a manufacturing operation, testing operation, or research and development operation to prevent air pollution, water pollution, or contamination that might other-

wise result from the manufacturing operation, testing operation, or research and development operation. "Machinery and equipment" also includes digital goods.

(b) "Machinery and equipment" does not include:

(i) Hand-powered tools;

(ii) Property with a useful life of less than one year;

(iii) Buildings, other than machinery and equipment that is permanently affixed to or becomes a physical part of a building; and

(iv) Building fixtures that are not integral to the manufacturing operation, testing operation, or research and development operation that are permanently affixed to and become a physical part of a building, such as utility systems for heating, ventilation, air conditioning, communications, plumbing, or electrical.

(c) Machinery and equipment is "used directly" in a manufacturing operation, testing operation, or research and development operation if the machinery and equipment:

(i) Acts upon or interacts with an item of tangible personal property;

(ii) Conveys, transports, handles, or temporarily stores an item of tangible personal property at the manufacturing site or testing site;

(iii) Controls, guides, measures, verifies, aligns, regulates, or tests tangible personal property at the site or away from the site;

(iv) Provides physical support for or access to tangible personal property;

(v) Produces power for, or lubricates machinery and equipment;

(vi) Produces another item of tangible personal property for use in the manufacturing operation, testing operation, or research and development operation;

(vii) Places tangible personal property in the container, package, or wrapping in which the tangible personal property is normally sold or transported; or

(viii) Is integral to research and development as defined in RCW 82.63.010.

(d) "Manufacturing operation" means the manufacturing of articles, substances, or commodities for sale as tangible personal property. A manufacturing operation begins at the point where the raw materials enter the manufacturing site and ends at the point where the processed material leaves the manufacturing site. The term also includes that portion of a cogeneration project that is used to generate power for consumption within the manufacturing site of which the cogeneration project is an integral part. The term does not include the production of electricity by a light and power business as defined in RCW 82.16.010 or the preparation of food products on the premises of a person selling food products at retail.

(e) "Cogeneration" means the simultaneous generation of electrical energy and low-grade heat from the same fuel.

(f) "Research and development operation" means engaging in research and development as defined in RCW 82.63.010 by a manufacturer or processor for hire.

(g) "Testing" means activities performed to establish or determine the properties, qualities, and limitations of tangible personal property.

(h) "Testing operation" means the testing of tangible personal property for a manufacturer or processor for hire. A testing operation begins at the point where the tangible personal property enters the testing site and ends at the point where the tangible personal property leaves the testing site. The term also includes that portion of a cogeneration project that is used to generate power for consumption within the site of which the cogeneration project is an integral part. The term does not include the production of electricity by a light and power business as defined in RCW 82.16.010 or the preparation of food products on the premises of a person selling food products at retail. [2009 c 535 § 510; 1999 c 211 § 5; 1999 c 211 § 3; 1998 c 330 § 1. Prior: 1996 c 247 § 2; 1996 c 173 § 3; 1995 1st sp.s. c 3 § 2.]

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Finding—Intent—1999 c 211: "The legislature finds that the application of the manufacturer's machinery and equipment sales and use tax exemption has, in some instances, been difficult and confusing for taxpayers, and included difficult reporting and recordkeeping requirements. In this act, it is the intent of the legislature to make clear its intent for the application of the exemption, and to extend the exemption to the purchase and use of machinery and equipment for businesses that perform testing of manufactured goods for manufacturers or processors for hire." [1999 c 211 § 1.]

Intent—1999 c 211 §§ 2 and 3: See note following RCW 82.04.120.

Effective date—1999 c 211 §§ 1-4: See note following RCW 82.04.120.

Findings—Intent—1996 c 247: See note following RCW 82.08.02566.

Findings—Intent—1996 c 173: "The legislature finds that the health, safety, and welfare of the people of the state of Washington are heavily dependent upon the continued encouragement, development, and expansion of opportunities for family wage employment in the state's manufacturing industries.

The legislature also finds that sales and use tax exemptions for manufacturing machinery and equipment enacted by the 1995 legislature have improved Washington's ability to compete with other states for manufacturing investment, but that additional incentives for manufacturers need to be adopted to solidify and enhance the state's competitive position.

The legislature intends to accomplish this by extending the current manufacturing machinery and equipment exemptions to allow a sales tax exemption for labor and service charges for repairing, cleaning, altering, or improving machinery and equipment, and a sales and use tax exemption for repair and replacement parts with a useful life of one year or more." [1996 c 173 § 1.]

Findings—1995 1st sp.s. c 3: "The legislature finds and declares that:

(1) The health, safety, and welfare of the people of the state of Washington are heavily dependent upon the continued encouragement, development, and expansion of opportunities for family wage employment in our state's private sector;

(2) The state's private sector must be encouraged to commit to continuous improvement of process, products, and services and to deliver high-quality, high-value products through technological innovations and high-performance work organizations;

(3) The state's opportunities for increased economic dealings with other states and nations of the world are dependent on supporting and attracting a diverse, stable, and competitive economic base of private sector employers;

(4) The state's current policy of applying its sales and use taxes to machinery, equipment, and installation labor used in manufacturing, research and development, and other activities has placed our state's private sector at a competitive disadvantage with other states and serves as a significant disincentive to the continuous improvement of products, technology, and modernization necessary for the preservation, stabilization, and expansion of employment and to ensure a stable economy; and

(5) It is vital to the continued development of economic opportunity in this state, including the development of new businesses and the expansion or modernization of existing businesses, that the state of Washington provide tax incentives to entities making a commitment to sites and operations in this state." [1995 1st sp.s. c 3 § 1.]

Effective date—1995 1st sp.s. c 3: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the

state government and its existing public institutions, and shall take effect July 1, 1995." [1995 1st sp.s. c 3 § 16.]

82.08.0257 Exemptions—Auction sales of personal property used in farming. The tax levied by RCW 82.08.020 does not apply to auction sales made by or through auctioneers of personal property (including household goods) that has been used in conducting a farm activity, when the seller thereof is a farmer and the sale is held or conducted upon a farm and not otherwise. [2009 c 535 § 511; 1980 c 37 § 25. Formerly RCW 82.08.030(7).]

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Intent—1980 c 37: See note following RCW 82.04.4281.

82.08.0262 Exemptions—Sales of airplanes, locomotives, railroad cars, or watercraft for use in interstate or foreign commerce or outside the territorial waters of the state or airplanes sold to United States government—Components thereof and of motor vehicles or trailers used for constructing, repairing, cleaning, etc.—Labor and services for constructing, repairing, cleaning, etc. (1) The tax levied by RCW 82.08.020 does not apply to:

(a) Sales of airplanes (i) to the United States government; (ii) for use in conducting interstate or foreign commerce; or (iii) for use in providing intrastate air transportation by a commuter air carrier;

(b) Sales of locomotives, railroad cars, or watercraft for use in conducting interstate or foreign commerce by transporting therein or therewith property and persons for hire or for use in conducting commercial deep sea fishing operations outside the territorial waters of the state;

(c) Sales of tangible personal property that becomes a component part of such airplanes, locomotives, railroad cars, or watercraft, and of motor vehicles or trailers whether owned by or leased with or without drivers and used by the holder of a carrier permit issued by the interstate commerce commission or its successor agency authorizing transportation by motor vehicle across the boundaries of this state, in the course of constructing, repairing, cleaning, altering, or improving the same; and

(d) Sales of or charges made for labor and services rendered in respect to such constructing, repairing, cleaning, altering, or improving.

(2) The term "commuter air carrier" means an air carrier holding authority under Title 14, Part 298 of the code of federal regulations that carries passengers on at least five round trips per week on at least one route between two or more points according to its published flight schedules that specify the times, days of the week, and places between which those flights are performed. [2009 c 503 § 1; 1998 c 311 § 5; 1994 c 43 § 1; 1980 c 37 § 29. Formerly RCW 82.08.030(11).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.08.0273 Exemptions—Sales to nonresidents of tangible personal property, digital goods, and digital codes for use outside the state—Proof of nonresident status—Penalties. (1) The tax levied by RCW 82.08.020 does not apply to sales to nonresidents of this state of tangible personal property, digital goods, and digital codes, when such property is for use outside this state, and the purchaser (a) is a bona fide resident of a state or possession or Province of Canada other than the state of Washington and such state, possession, or Province of Canada does not impose a retail sales tax or use tax of three percent or more or, if imposing such a tax, permits Washington residents exemption from otherwise taxable sales by reason of their residence, and (b) agrees, when requested, to grant the department of revenue access to such records and other forms of verification at his or her place of residence to assure that such purchases are not first used substantially in the state of Washington.

(2) Notwithstanding anything to the contrary in this chapter, if parts or other tangible personal property are installed by the seller during the course of repairing, cleaning, altering, or improving motor vehicles, trailers, or campers and the seller makes a separate charge for the tangible personal property, the tax levied by RCW 82.08.020 does not apply to the separately stated charge to a nonresident purchaser for the tangible personal property but only if the separately stated charge does not exceed either the seller's current publicly stated retail price for the tangible personal property or, if no publicly stated retail price is available, the seller's cost for the tangible personal property. However, the exemption provided by this section does not apply if tangible personal property is installed by the seller during the course of repairing, cleaning, altering, or improving motor vehicles, trailers, or campers and the seller makes a single nonitemized charge for providing the tangible personal property and service. All of the requirements in subsections (1) and (3) through (6) of this section apply to this subsection.

(3)(a) Any person claiming exemption from retail sales tax under the provisions of this section must display proof of his or her current nonresident status as provided in this section.

(b) Acceptable proof of a nonresident person's status includes one piece of identification such as a valid driver's license from the jurisdiction in which the out-of-state residency is claimed or a valid identification card which has a photograph of the holder and is issued by the out-of-state jurisdiction. Identification under this subsection (3)(b) must show the holder's residential address and have as one of its legal purposes the establishment of residency in that out-of-state jurisdiction.

(4) Nothing in this section requires the vendor to make tax exempt retail sales to nonresidents. A vendor may choose to make sales to nonresidents, collect the sales tax, and remit the amount of sales tax collected to the state as otherwise provided by law. If the vendor chooses to make a sale to a nonresident without collecting the sales tax, the vendor shall, in good faith, examine the proof of nonresidence, determine whether the proof is acceptable under subsection (3)(b) of this section, and maintain records for each nontaxable sale which shall show the type of proof accepted, including any identification numbers where appropriate, and the expiration date, if any.

(5)(a) Any person making fraudulent statements, which includes the offer of fraudulent identification or fraudulently procured identification to a vendor, in order to purchase goods without paying retail sales tax is guilty of perjury under chapter 9A.72 RCW.

(b) Any person making tax exempt purchases under this section by displaying proof of identification not his or her

own, or counterfeit identification, with intent to violate the provisions of this section, is guilty of a misdemeanor and, in addition, is liable for the tax and subject to a penalty equal to the greater of one hundred dollars or the tax due on such purchases.

(6)(a) Any vendor who makes sales without collecting the tax to a person who does not hold valid identification establishing out-of-state residency, and any vendor who fails to maintain records of sales to nonresidents as provided in this section, is personally liable for the amount of tax due.

(b) Any vendor who makes sales without collecting the retail sales tax under this section and who has actual knowledge that the purchaser's proof of identification establishing out-of-state residency is fraudulent is guilty of a misdemeanor and, in addition, is liable for the tax and subject to a penalty equal to the greater of one thousand dollars or the tax due on such sales. In addition, both the purchaser and the vendor are liable for any penalties and interest assessable under chapter 82.32 RCW. [2009 c 535 § 512; 2007 c 135 § 2; 2003 c 53 § 399; 1993 c 444 § 1; 1988 c 96 § 1; 1982 1st ex.s. c 5 § 1; 1980 c 37 § 39. Formerly RCW 82.08.030(21).]

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

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

Effective date—1988 c 96: "This act shall take effect July 1, 1989." [1988 c 96 § 2.]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.08.0293 Exemptions—Sales of food and food ingredients. (1) The tax levied by RCW 82.08.020 shall not apply to sales of food and food ingredients. "Food and food ingredients" means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. "Food and food ingredients" does not include:

(a) "Alcoholic beverages," which means beverages that are suitable for human consumption and contain one-half of one percent or more of alcohol by volume; and

(b) "Tobacco," which means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco.

(2) The exemption of "food and food ingredients" provided for in subsection (1) of this section shall not apply to prepared food, soft drinks, or dietary supplements.

(a) "Prepared food" means:

(i) Food sold in a heated state or heated by the seller;

(ii) Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. A plate does not include a container or packaging used to transport the food; or

(iii) Two or more food ingredients mixed or combined by the seller for sale as a single item, except:

(A) Food that is only cut, repackaged, or pasteurized by the seller; or

(B) Raw eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the federal food and drug administration in chapter 3, part 401.11 of The Food Code, published by the food and drug administration, as amended or renumbered as of January 1, 2003, so as to prevent foodborne illness.

(b) "Prepared food" does not include the following food or food ingredients, if the food or food ingredients are sold without eating utensils provided by the seller:

(i) Food sold by a seller whose proper primary North American industry classification system (NAICS) classification is manufacturing in sector 311, except subsector 3118 (bakeries), as provided in the "North American industry classification system—United States, 2002";

(ii) Food sold in an unheated state by weight or volume as a single item; or

(iii) Bakery items. The term "bakery items" includes bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, Danish, cakes, tortes, pies, tarts, muffins, bars, cookies, or tortillas.

(c) "Soft drinks" means nonalcoholic beverages that contain natural or artificial sweeteners. Soft drinks do not include beverages that contain: Milk or milk products; soy, rice, or similar milk substitutes; or greater than fifty percent of vegetable or fruit juice by volume.

(d) "Dietary supplement" means any product, other than tobacco, intended to supplement the diet that:

(i) Contains one or more of the following dietary ingredients:

(A) A vitamin;

(B) A mineral;

(C) An herb or other botanical;

(D) An amino acid;

(E) A dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or

(F) A concentrate, metabolite, constituent, extract, or combination of any ingredient described in this subsection;

(ii) Is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not intended for ingestion in such form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and

(iii) Is required to be labeled as a dietary supplement, identifiable by the "supplement facts" box found on the label as required pursuant to 21 C.F.R. Sec. 101.36, as amended or renumbered as of January 1, 2003.

(3) Notwithstanding anything in this section to the contrary, the exemption of "food and food ingredients" provided in this section shall apply to food and food ingredients that are furnished, prepared, or served as meals:

(a) Under a state administered nutrition program for the aged as provided for in the Older Americans Act (P.L. 95-478 Title III) and RCW 74.38.040(6);

(b) That are provided to senior citizens, individuals with disabilities, or low-income persons by a not-for-profit organization organized under chapter 24.03 or 24.12 RCW; or

(c) That are provided to residents, sixty-two years of age or older, of a qualified low-income senior housing facility by the lessor or operator of the facility. The sale of a meal that is billed to both spouses of a marital community or both domestic partners of a domestic partnership meets the age requirement in this subsection (3)(c) if at least one of the spouses or domestic partners is at least sixty-two years of age. For purposes of this subsection, "qualified low-income senior housing facility" means a facility:

(i) That meets the definition of a qualified low-income housing project under Title 26 U.S.C. Sec. 42 of the federal internal revenue code, as existing on August 1, 2009;

(ii) That has been partially funded under Title 42 U.S.C. Sec. 1485 of the federal internal revenue code; and

(iii) For which the lessor or operator has at any time been entitled to claim a federal income tax credit under Title 26 U.S.C. Sec. 42 of the federal internal revenue code.

(4)(a) Subsection (1) of this section notwithstanding, the retail sale of food and food ingredients is subject to sales tax under RCW 82.08.020 if the food and food ingredients are sold through a vending machine, and in this case the selling price for purposes of RCW 82.08.020 is fifty-seven percent of the gross receipts.

(b) This subsection (4) does not apply to hot prepared food and food ingredients, other than food and food ingredients which are heated after they have been dispensed from the vending machine.

(c) For tax collected under this subsection (4), the requirements that the tax be collected from the buyer and that the amount of tax be stated as a separate item are waived. [2009 c 483 § 2; 2004 c 153 § 201; 2003 c 168 § 301; 1988 c 103 § 1; 1986 c 182 § 1; 1985 c 104 § 1; 1982 1st ex.s. c 35 § 33.]

Finding—Intent—2009 c 483: "The legislature finds that low-income senior citizens are one of the most vulnerable segments of our population who often find it difficult to find safe and clean housing that is also affordable. The federal government has identified this population as being at risk. The federal government provides income tax credits and favorable financing to encourage developers and operators to provide safe and clean housing for our low-income senior citizens. There are only four such facilities in the state, and it is doubtful that any new ones will be built in the future. These four facilities offer "service packages" to their residents, which may include meals, housekeeping, recreation, laundry, and transportation. Washington's sales and use tax law provides generally that when multiple goods and services are offered for one nonitemized price, the entire transaction is subject to sales or use tax if any of the component goods or services are subject to sales tax. Consequently, in order to provide tax relief to these vulnerable tenants, the legislature intends to establish sales and use tax exemptions for the sale of service packages and to meals sold outside of a service package when provided by the lessor or operator of these senior housing facilities to tenants who are at least sixty-two years old." [2009 c 483 § 1.]

Effective date—2009 c 483: "This act takes effect August 1, 2009." [2009 c 483 § 6.]

Retroactive effective date—Effective date—2004 c 153: "(1) Section 201 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and retroactively takes effect January 1, 2004.

(2) This act takes effect July 1, 2004, except section 201 of this act." [2004 c 153 § 501.]

Effective dates—Part headings not law—2003 c 168: See notes following RCW 82.08.010.

Effective date—1988 c 103: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect June 1, 1988." [1988 c 103 § 4.]

Severability—Effective dates—1982 1st ex.s. c 35: See notes following RCW 82.08.020.

82.08.040 Consignee, factor, bailee, auctioneer deemed seller. (1) Every consignee, bailee, factor, or auctioneer selling or calling for bids on personal property belonging to another, is deemed the seller of such personal property within the meaning of this chapter. All sales made by such persons are subject to the provisions of this chapter even though the sale would have been exempt from the tax imposed in this chapter had it been made directly by the owner of the property sold.

(2)(a) Except as provided in (b) of this subsection (2), every consignee, bailee, factor, or auctioneer must collect and remit the amount of tax due under this chapter with respect to sales made or called by that seller.

(b) If the owner of the property sold is engaged in the business of making sales at retail in this state, the tax imposed under this chapter may be remitted by such owner under such rules as the department may adopt. [2009 c 535 § 1105; 1975 1st ex.s. c 278 § 46; 1961 c 15 § 82.08.040. Prior: 1939 c 225 § 8; 1935 c 180 § 18; RRS § 8370-18.]

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

82.08.050 Buyer to pay, seller to collect tax—Statement of tax—Exception—Penalties—Contingent expiration of subsection. ***(Effective until January 1, 2010.)*** (1) The tax hereby imposed shall be paid by the buyer to the seller, and each seller shall collect from the buyer the full amount of the tax payable in respect to each taxable sale in accordance with the schedule of collections adopted by the department pursuant to the provisions of RCW 82.08.060.

(2) The tax required by this chapter, to be collected by the seller, shall be deemed to be held in trust by the seller until paid to the department, and any seller who appropriates or converts the tax collected to his or her own use or to any use other than the payment of the tax to the extent that the money required to be collected is not available for payment on the due date as prescribed in this chapter is guilty of a gross misdemeanor.

(3) In case any seller fails to collect the tax herein imposed or, having collected the tax, fails to pay it to the department in the manner prescribed by this chapter, whether such failure is the result of his or her own acts or the result of acts or conditions beyond his or her control, he or she shall, nevertheless, be personally liable to the state for the amount of the tax, unless the seller has taken from the buyer a resale certificate under RCW 82.04.470, a copy of a direct pay permit issued under RCW 82.32.087, a direct mail form as provided in RCW 82.32.730(5), an exemption certificate claiming direct mail as provided in RCW 82.32.730(6), or other information required under the streamlined sales and use tax agreement, or information required under rules adopted by the department.

(4) Sellers shall not be relieved from personal liability for the amount of the tax unless they maintain proper records of exempt transactions and provide them to the department when requested.

(5) Sellers are not relieved from personal liability for the amount of tax if they fraudulently fail to collect the tax or if they solicit purchasers to participate in an unlawful claim of exemption.

(6) Sellers are not relieved from personal liability for the amount of tax if they accept an exemption certificate from a purchaser claiming an entity-based exemption if:

(a) The subject of the transaction sought to be covered by the exemption certificate is actually received by the purchaser at a location operated by the seller in Washington; and

(b) Washington provides an exemption certificate that clearly and affirmatively indicates that the claimed exemption is not available in Washington. Graying out exemption reason types on a uniform form and posting it on the department's web site is a clear and affirmative indication that the grayed out exemptions are not available.

(7)(a) Sellers are relieved from personal liability for the amount of tax if they obtain a fully completed exemption certificate or capture the relevant data elements required under the streamlined sales and use tax agreement within ninety days, or a longer period as may be provided by rule by the department, subsequent to the date of sale.

(b) If the seller has not obtained an exemption certificate or all relevant data elements required under the streamlined sales and use tax agreement within the period allowed subsequent to the date of sale, the seller may, within one hundred twenty days, or a longer period as may be provided by rule by the department, subsequent to a request for substantiation by the department, either prove that the transaction was not subject to tax by other means or obtain a fully completed exemption certificate from the purchaser, taken in good faith.

(c) Sellers are relieved from personal liability for the amount of tax if they obtain a blanket exemption certificate for a purchaser with which the seller has a recurring business relationship. The department may not request from a seller renewal of blanket certificates or updates of exemption certificate information or data elements if there is a recurring business relationship between the buyer and seller. For purposes of this subsection (7)(c), a "recurring business relationship" means at least one sale transaction within a period of twelve consecutive months.

(8) The amount of tax, until paid by the buyer to the seller or to the department, shall constitute a debt from the buyer to the seller and any seller who fails or refuses to collect the tax as required with intent to violate the provisions of this chapter or to gain some advantage or benefit, either direct or indirect, and any buyer who refuses to pay any tax due under this chapter is guilty of a misdemeanor.

(9) The tax required by this chapter to be collected by the seller shall be stated separately from the selling price in any sales invoice or other instrument of sale. On all retail sales through vending machines, the tax need not be stated separately from the selling price or collected separately from the buyer. For purposes of determining the tax due from the buyer to the seller and from the seller to the department it shall be conclusively presumed that the selling price quoted in any price list, sales document, contract or other agreement between the parties does not include the tax imposed by this chapter, but if the seller advertises the price as including the tax or that the seller is paying the tax, the advertised price shall not be considered the selling price.

(10) Where a buyer has failed to pay to the seller the tax imposed by this chapter and the seller has not paid the amount of the tax to the department, the department may, in its discretion, proceed directly against the buyer for collection of the tax, in which case a penalty of ten percent may be added to the amount of the tax for failure of the buyer to pay the same to the seller, regardless of when the tax may be collected by the department; and all of the provisions of chapter 82.32 RCW, including those relative to interest and penalties, shall apply in addition; and, for the sole purpose of applying the various provisions of chapter 82.32 RCW, the twenty-fifth day of the month following the tax period in which the purchase was made shall be considered as the due date of the tax.

(11) Notwithstanding subsections (1) through (10) of this section, any person making sales is not obligated to collect the tax imposed by this chapter if:

(a) The person's activities in this state, whether conducted directly or through another person, are limited to:

(i) The storage, dissemination, or display of advertising;

(ii) The taking of orders; or

(iii) The processing of payments; and

(b) The activities are conducted electronically via a web site on a server or other computer equipment located in Washington that is not owned or operated by the person making sales into this state nor owned or operated by an affiliated person. "Affiliated persons" has the same meaning as provided in RCW 82.04.424.

(12) Subsection (11) of this section expires when: (a) The United States congress grants individual states the authority to impose sales and use tax collection duties on remote sellers; or (b) it is determined by a court of competent jurisdiction, in a judgment not subject to review, that a state can impose sales and use tax collection duties on remote sellers.

(13) For purposes of this section, "seller" includes a certified service provider, as defined in RCW 82.32.020, acting as agent for the seller. [2009 c 289 § 2; 2007 c 6 § 1202. Prior: 2003 c 168 § 203; 2003 c 76 § 3; 2003 c 53 § 400; 2001 c 188 § 4; 1993 sp.s. c 25 § 704; 1992 c 206 § 2; 1986 c 36 § 1; 1985 c 38 § 1; 1971 ex.s. c 299 § 7; 1965 ex.s. c 173 § 15; 1961 c 15 § 82.08.050; prior: 1951 c 44 § 1; 1949 c 228 § 6; 1941 c 71 § 3; 1939 c 225 § 11; 1937 c 227 § 7; 1935 c 180 § 21; Rem. Supp. 1949 § 8370-21.]

Part headings not law—Savings—Effective date—Severability—2007 c 6: See notes following RCW 82.32.020.

Findings—Intent—2007 c 6: See note following RCW 82.14.495.

Effective dates—Part headings not law—2003 c 168: See notes following RCW 82.08.010.

Intent—2003 c 76: See note following RCW 82.04.424.

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

Finding—Intent—Effective date—2001 c 188: See notes following RCW 82.32.087.

Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25: See notes following RCW 82.04.230.

Effective date—1992 c 206: See note following RCW 82.04.170.

Effective dates—Severability—1971 ex.s. c 299: See notes following RCW 82.04.050.

Project on exemption reporting requirements: RCW 82.32.440.

82.08.050 Buyer to pay, seller to collect tax—Statement of tax—Exception—Penalties—Contingent expiration of subsection. ***(Effective January 1, 2010.)*** (1) The tax hereby imposed shall be paid by the buyer to the seller, and each seller shall collect from the buyer the full amount of the tax payable in respect to each taxable sale in accordance with the schedule of collections adopted by the department pursuant to the provisions of RCW 82.08.060.

(2) The tax required by this chapter, to be collected by the seller, shall be deemed to be held in trust by the seller

until paid to the department, and any seller who appropriates or converts the tax collected to his or her own use or to any use other than the payment of the tax to the extent that the money required to be collected is not available for payment on the due date as prescribed in this chapter is guilty of a gross misdemeanor.

(3) In case any seller fails to collect the tax herein imposed or, having collected the tax, fails to pay it to the department in the manner prescribed by this chapter, whether such failure is the result of his or her own acts or the result of acts or conditions beyond his or her control, he or she shall, nevertheless, be personally liable to the state for the amount of the tax, unless the seller has taken from the buyer a seller's permit or uniform exemption certificate authorized under RCW 82.04.470, a copy of a direct pay permit issued under RCW 82.32.087, a direct mail form as provided in RCW 82.32.730(5), an exemption certificate claiming direct mail as provided in RCW 82.32.730(6), or other information required under the streamlined sales and use tax agreement, or information required under rules adopted by the department.

(4) Sellers shall not be relieved from personal liability for the amount of the tax unless they maintain proper records of exempt transactions and provide them to the department when requested.

(5) Sellers are not relieved from personal liability for the amount of tax if they fraudulently fail to collect the tax or if they solicit purchasers to participate in an unlawful claim of exemption.

(6) Sellers are not relieved from personal liability for the amount of tax if they accept an exemption certificate from a purchaser claiming an entity-based exemption if:

(a) The subject of the transaction sought to be covered by the exemption certificate is actually received by the purchaser at a location operated by the seller in Washington; and

(b) Washington provides an exemption certificate that clearly and affirmatively indicates that the claimed exemption is not available in Washington. Graying out exemption reason types on a uniform form and posting it on the department's web site is a clear and affirmative indication that the grayed out exemptions are not available.

(7)(a) Sellers are relieved from personal liability for the amount of tax if they obtain a fully completed exemption certificate or capture the relevant data elements required under the streamlined sales and use tax agreement within ninety days, or a longer period as may be provided by rule by the department, subsequent to the date of sale.

(b) If the seller has not obtained an exemption certificate or all relevant data elements required under the streamlined sales and use tax agreement within the period allowed subsequent to the date of sale, the seller may, within one hundred twenty days, or a longer period as may be provided by rule by the department, subsequent to a request for substantiation by the department, either prove that the transaction was not subject to tax by other means or obtain a fully completed exemption certificate from the purchaser, taken in good faith.

(c) Sellers are relieved from personal liability for the amount of tax if they obtain a blanket exemption certificate for a purchaser with which the seller has a recurring business relationship. The department may not request from a seller renewal of blanket certificates or updates of exemption certificate information or data elements if there is a recurring business relationship between the buyer and seller. For purposes of this subsection (7)(c), a "recurring business relationship" means at least one sale transaction within a period of twelve consecutive months.

(8) The amount of tax, until paid by the buyer to the seller or to the department, shall constitute a debt from the buyer to the seller and any seller who fails or refuses to collect the tax as required with intent to violate the provisions of this chapter or to gain some advantage or benefit, either direct or indirect, and any buyer who refuses to pay any tax due under this chapter is guilty of a misdemeanor.

(9) The tax required by this chapter to be collected by the seller shall be stated separately from the selling price in any sales invoice or other instrument of sale. On all retail sales through vending machines, the tax need not be stated separately from the selling price or collected separately from the buyer. For purposes of determining the tax due from the buyer to the seller and from the seller to the department it shall be conclusively presumed that the selling price quoted in any price list, sales document, contract or other agreement between the parties does not include the tax imposed by this chapter, but if the seller advertises the price as including the tax or that the seller is paying the tax, the advertised price shall not be considered the selling price.

(10) Where a buyer has failed to pay to the seller the tax imposed by this chapter and the seller has not paid the amount of the tax to the department, the department may, in its discretion, proceed directly against the buyer for collection of the tax, in which case a penalty of ten percent may be added to the amount of the tax for failure of the buyer to pay the same to the seller, regardless of when the tax may be collected by the department; and all of the provisions of chapter 82.32 RCW, including those relative to interest and penalties, shall apply in addition; and, for the sole purpose of applying the various provisions of chapter 82.32 RCW, the twenty-fifth day of the month following the tax period in which the purchase was made shall be considered as the due date of the tax.

(11) Notwithstanding subsections (1) through (10) of this section, any person making sales is not obligated to collect the tax imposed by this chapter if:

(a) The person's activities in this state, whether conducted directly or through another person, are limited to:

(i) The storage, dissemination, or display of advertising;

(ii) The taking of orders; or

(iii) The processing of payments; and

(b) The activities are conducted electronically via a web site on a server or other computer equipment located in Washington that is not owned or operated by the person making sales into this state nor owned or operated by an affiliated person. "Affiliated persons" has the same meaning as provided in RCW 82.04.424.

(12) Subsection (11) of this section expires when: (a) The United States congress grants individual states the authority to impose sales and use tax collection duties on remote sellers; or (b) it is determined by a court of competent jurisdiction, in a judgment not subject to review, that a state can impose sales and use tax collection duties on remote sellers.

(13) For purposes of this section, "seller" includes a certified service provider, as defined in RCW 82.32.020, acting as agent for the seller. [2009 c 563 § 206; 2009 c 289 § 2; 2007 c 6 § 1202. Prior: 2003 c 168 § 203; 2003 c 76 § 3; 2003 c 53 § 400; 2001 c 188 § 4; 1993 sp.s. c 25 § 704; 1992 c 206 § 2; 1986 c 36 § 1; 1985 c 38 § 1; 1971 ex.s. c 299 § 7; 1965 ex.s. c 173 § 15; 1961 c 15 § 82.08.050; prior: 1951 c 44 § 1; 1949 c 228 § 6; 1941 c 71 § 3; 1939 c 225 § 11; 1937 c 227 § 7; 1935 c 180 § 21; Rem. Supp. 1949 § 8370-21.]

Reviser's note: This section was amended by 2009 c 289 § 2 and by 2009 c 563 § 206, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Finding—Intent—Construction—Effective date—Reports and recommendations—2009 c 563: See notes following RCW 82.32.780.

Part headings not law—Savings—Effective date—Severability—2007 c 6: See notes following RCW 82.32.020.

Findings—Intent—2007 c 6: See note following RCW 82.14.495.

Effective dates—Part headings not law—2003 c 168: See notes following RCW 82.08.010.

Intent—2003 c 76: See note following RCW 82.04.424.

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

Finding—Intent—Effective date—2001 c 188: See notes following RCW 82.32.087.

Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25: See notes following RCW 82.04.230.

Effective date—1992 c 206: See note following RCW 82.04.170.

Effective dates—Severability—1971 ex.s. c 299: See notes following RCW 82.04.050.

Project on exemption reporting requirements: RCW 82.32.440.

82.08.130 Resale certificate—Purchase and resale—Rules. ***(Effective until January 1, 2010.)*** (1) If a buyer normally is engaged in both consuming and reselling certain types of personal property, the retail sale of which is taxable under this chapter, and the buyer is not able to determine at the time of purchase whether the particular property acquired will be consumed or resold, the buyer may use a resale certificate for the entire purchase if the buyer principally resells the articles according to the general nature of the buyer's business. The buyer shall account for the value of any articles purchased with a resale certificate that are used by the buyer and remit the sales tax on the articles to the department.

(2) A buyer who pays a tax on all purchases and subsequently resells an article at retail, without intervening use by the buyer, shall collect the tax from the purchaser as otherwise provided by law and is entitled to a deduction on the buyer's tax return equal to the cost to the buyer of the property resold upon which retail sales tax has been paid. The deduction is allowed only if the taxpayer keeps and preserves records that show the names of the persons from whom the articles were purchased, the date of the purchase, the type of articles, the amount of the purchase, and the tax that was paid. The department shall provide by rule for the refund or credit of retail sales tax paid by a buyer for purchases that are later sold at wholesale without intervening use by the buyer. [2009 c 535 § 1106; 1993 sp.s. c 25 § 702.]

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25: See notes following RCW 82.04.230.

Resale certificates: RCW 82.04.470 and 82.32.291.

82.08.130 Seller's permit or uniform exemption certificate—Purchase and resale—Rules. ***(Effective January 1, 2010.)*** (1) If a buyer normally is engaged in both consuming and reselling certain types of personal property, the retail sale of which is taxable under this chapter, and the buyer is not able to determine at the time of purchase whether the particular property acquired will be consumed or resold, the buyer may use a seller's permit or, if eligible, a uniform exemption certificate authorized under RCW 82.04.470 for the entire purchase if the buyer principally resells the articles according to the general nature of the buyer's business. The buyer shall account for the value of any articles purchased with a seller's permit or uniform exemption certificate authorized under RCW 82.04.470 that are used by the buyer and remit the deferred sales tax on the articles to the department.

(2) A buyer who pays a tax on all purchases and subsequently resells an article or service at retail, without intervening use by the buyer, shall collect the tax from the purchaser as otherwise provided by law and is entitled to a deduction or credit on the buyer's tax return equal to, in the case of a deduction, the cost to the buyer of the property or service resold upon which retail sales tax has been paid, and in the case of a credit, the amount of state and local sales taxes paid with respect to the property or service resold. The deduction or credit is allowed only if the taxpayer keeps and preserves records that show the names of the persons from whom the articles or services were purchased, the date of the purchase, the type of articles or services, the amount of the purchase, and the tax that was paid.

(3) The department must provide by rule for the refund or credit of retail sales tax paid by a buyer for purchases that are later resold without intervening use by the buyer or for purchases that would otherwise have met the definition of wholesale sale if the buyer had provided the seller with a seller's permit or uniform exemption certificate as authorized in RCW 82.04.470.

(4) Nothing in this section may be construed to authorize a deduction or credit in respect to the purchase of services if the services are not of a type that can be sold at wholesale under the definition of wholesale sale in RCW 82.04.060. [2009 c 563 § 207; 2009 c 535 § 1106; 1993 sp.s. c 25 § 702.]

Reviser's note: This section was amended by 2009 c 535 § 1106 and by 2009 c 563 § 207, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Finding—Intent—Construction—Effective date—Reports and recommendations—2009 c 563: See notes following RCW 82.32.780.

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25: See notes following RCW 82.04.230.

Resale certificates: RCW 82.04.470 and 82.32.291.

82.08.150 Tax on certain sales of intoxicating liquors—Additional taxes for specific purposes—Collection. (1) There is levied and shall be collected a tax upon each retail sale of spirits in the original package at the rate of fifteen percent of the selling price. The tax imposed in this subsection shall apply to all such sales including sales by the

Washington state liquor stores and agencies, but excluding sales to spirits, beer, and wine restaurant licensees.

(2) There is levied and shall be collected a tax upon each sale of spirits in the original package at the rate of ten percent of the selling price on sales by Washington state liquor stores and agencies to spirits, beer, and wine restaurant licensees.

(3) There is levied and shall be collected an additional tax upon each retail sale of spirits in the original package at the rate of one dollar and seventy-two cents per liter. The additional tax imposed in this subsection shall apply to all such sales including sales by Washington state liquor stores and agencies, and including sales to spirits, beer, and wine restaurant licensees.

(4) An additional tax is imposed equal to fourteen percent multiplied by the taxes payable under subsections (1), (2), and (3) of this section.

(5) An additional tax is imposed upon each retail sale of spirits in the original package at the rate of seven cents per liter. The additional tax imposed in this subsection shall apply to all such sales including sales by Washington state liquor stores and agencies, and including sales to spirits, beer, and wine restaurant licensees. All revenues collected during any month from this additional tax shall be deposited in the state general fund by the twenty-fifth day of the following month.

(6)(a) An additional tax is imposed upon retail sale of spirits in the original package at the rate of one and seven-tenths percent of the selling price through June 30, 1995, two and six-tenths percent of the selling price for the period July 1, 1995, through June 30, 1997, and three and four-tenths of the selling price thereafter. This additional tax applies to all such sales including sales by Washington state liquor stores and agencies, but excluding sales to spirits, beer, and wine restaurant licensees.

(b) An additional tax is imposed upon retail sale of spirits in the original package at the rate of one and one-tenth percent of the selling price through June 30, 1995, one and seven-tenths percent of the selling price for the period July 1, 1995, through June 30, 1997, and two and three-tenths of the selling price thereafter. This additional tax applies to all such sales to spirits, beer, and wine restaurant licensees.

(c) An additional tax is imposed upon each retail sale of spirits in the original package at the rate of twenty cents per liter through June 30, 1995, thirty cents per liter for the period July 1, 1995, through June 30, 1997, and forty-one cents per liter thereafter. This additional tax applies to all such sales including sales by Washington state liquor stores and agencies, and including sales to spirits, beer, and wine restaurant licensees.

(d) All revenues collected during any month from additional taxes under this subsection shall be deposited in the state general fund by the twenty-fifth day of the following month.

(7)(a) An additional tax is imposed upon each retail sale of spirits in the original package at the rate of one dollar and thirty-three cents per liter. This additional tax applies to all such sales including sales by Washington state liquor stores and agencies, but excluding sales to spirits, beer, and wine restaurant licensees.

(b) All revenues collected during any month from additional taxes under this subsection shall be deposited by the twenty-fifth day of the following month into the general fund.

(8) The tax imposed in RCW 82.08.020 shall not apply to sales of spirits in the original package.

(9) The taxes imposed in this section shall be paid by the buyer to the seller, and each seller shall collect from the buyer the full amount of the tax payable in respect to each taxable sale under this section. The taxes required by this section to be collected by the seller shall be stated separately from the selling price and for purposes of determining the tax due from the buyer to the seller, it shall be conclusively presumed that the selling price quoted in any price list does not include the taxes imposed by this section.

(10) As used in this section, the terms, "spirits" and "package" shall have the meaning ascribed to them in chapter 66.04 RCW. [2009 c 479 § 65; 2005 c 514 § 201; 2003 c 167 § 11; 1998 c 126 § 16; 1997 c 321 § 55; 1994 sp.s. c 7 § 903 (Referendum Bill No. 43, approved November 8, 1994); 1993 c 492 § 310; 1989 c 271 § 503; 1983 2nd ex.s. c 3 § 12; 1982 1st ex.s. c 35 § 3; 1981 1st ex.s. c 5 § 25; 1973 1st ex.s. c 204 § 1; 1971 ex.s. c 299 § 9; 1969 ex.s. c 21 § 11; 1965 ex.s. c 173 § 16; 1965 c 42 § 1; 1961 ex.s. c 24 § 2; 1961 c 15 § 82.08.150. Prior: 1959 ex.s. c 5 § 9; 1957 c 279 § 4; 1955 c 396 § 1; 1953 c 91 § 5; 1951 2nd ex.s. c 28 § 5.]

Effective date—2009 c 479: See note following RCW 2.56.030.

Effective date—2005 c 514: See note following RCW 83.100.230.

Part headings not law—Severability—2005 c 514: See notes following RCW 82.12.808.

Effective date—2003 c 167: See note following RCW 66.24.244.

Report to legislature—2003 c 167: See note following RCW 66.24.250.

Effective date—1998 c 126: See note following RCW 66.20.010.

Effective date—1997 c 321: See note following RCW 66.24.010.

Contingent partial referendum—1994 sp.s. c 7 §§ 901-909: See note following RCW 66.24.210.

Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

Effective dates—1989 c 271: See note following RCW 66.28.200.

Severability—1989 c 271: See note following RCW 9.94A.510.

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Severability—Effective dates—1982 1st ex.s. c 35: See notes following RCW 82.08.020.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Effective date—1973 1st ex.s. c 204: "This 1973 amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect the first day of July, 1973." [1973 1st ex.s. c 204 § 4.]

Effective dates—Severability—1971 ex.s. c 299: See notes following RCW 82.04.050.

Effective date—1969 ex.s. c 21: See note following RCW 66.04.010.

82.08.195 Bundled transactions—Tax imposed. (1) Except as provided in subsection (6) of this section, a bundled transaction is subject to the tax imposed by RCW

82.08.020 if the retail sale of any of its component products would be subject to the tax imposed by RCW 82.08.020.

(2) The transactions described in RCW 82.08.190(4) (a) and (b) are subject to the tax imposed by RCW 82.08.020 if the service that is the true object of the transaction is subject to the tax imposed by RCW 82.08.020. If the service that is the true object of the transaction is not subject to the tax imposed by RCW 82.08.020, the transaction is not subject to the tax imposed by RCW 82.08.020.

(3) The transaction described in RCW 82.08.190(4)(c) is not subject to the tax imposed by RCW 82.08.020.

(4) The transaction described in RCW 82.08.190(4)(d) is not subject to the tax imposed by RCW 82.08.020.

(5) In the case of a bundled transaction that includes any of the following: Telecommunications service, ancillary service, internet access, or audio or video programming service:

(a) If the price is attributable to products that are taxable and products that are not taxable, the portion of the price attributable to the nontaxable products are subject to the tax imposed by RCW 82.08.020 unless the seller can identify by reasonable and verifiable standards the portion from its books and records that are kept in the regular course of business for other purposes including, but not limited to, nontax purposes;

(b) If the price is attributable to products that are subject to tax at different tax rates, the total price is attributable to the products subject to the tax at the highest tax rate unless the seller can identify by reasonable and verifiable standards the portion of the price attributable to the products subject to the tax imposed by RCW 82.08.020 at the lower rate from its books and records that are kept in the regular course of business for other purposes including, but not limited to, nontax purposes.

(6) The tax imposed by RCW 82.08.020 does not apply in respect to a bundled transaction consisting entirely of the sale of services or of services and prepared food, if the sale is to a resident, sixty-two years of age or older, of a qualified low-income senior housing facility by the lessor or operator of the facility. A single bundled transaction involving both spouses of a marital community or both domestic partners of a domestic partnership meets the age requirement in this subsection if at least one of the spouses or domestic partners is at least sixty-two years of age. For purposes of this subsection, "qualified low-income senior housing facility" has the same meaning as in RCW 82.08.0293.

(7) In the case of the sale of a code that provides a purchaser with the right to obtain more than one digital product, and which may also include the right to obtain other products or services, and all of the products and services, digital or otherwise, to be obtained through the use of the code do not have the same sales and use tax treatment, for purposes of the tax imposed by RCW 82.08.020:

(a) The transaction is deemed to be the sale of the products and services to be obtained through the use of the code; and

(b)(i) The tax imposed by RCW 82.08.020 applies to the entire selling price of the code, except as provided in (b)(ii) of this subsection (7).

(ii) If the seller can identify by reasonable and verifiable standards the portion of the selling price attributable to the products and services that are not subject to the tax imposed by RCW 82.08.020 from its books and records that are kept in the regular course of business for other purposes including, but not limited to, nontax purposes, the tax imposed by RCW 82.08.020 does not apply to that portion of the selling price of the code attributable to the products and services that are not subject to the tax imposed by RCW 82.08.020. [2009 c 535 § 801; 2009 c 483 § 3; 2007 c 6 § 1402.]

Reviser's note: This section was amended by 2009 c 483 § 3 and by 2009 c 535 § 801, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Finding—Intent—Effective date—2009 c 483: See notes following RCW 82.08.0293.

Part headings not law—Savings—Effective date—Severability—2007 c 6: See notes following RCW 82.32.020.

Findings—Intent—2007 c 6: See note following RCW 82.14.495.

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

82.08.805 Exemptions—Personal property used at an aluminum smelter. (1) A person who has paid tax under RCW 82.08.020 for personal property used at an aluminum smelter, tangible personal property that will be incorporated as an ingredient or component of buildings or other structures at an aluminum smelter, or for labor and services rendered with respect to such buildings, structures, or personal property, is eligible for an exemption from the state share of the tax in the form of a credit, as provided in this section. A person claiming an exemption must pay the tax and may then take a credit equal to the state share of retail sales tax paid under RCW 82.08.020. The person shall submit information, in a form and manner prescribed by the department, specifying the amount of qualifying purchases or acquisitions for which the exemption is claimed and the amount of exempted tax.

(2) For the purposes of this section, "aluminum smelter" has the same meaning as provided in RCW 82.04.217.

(3) Credits may not be claimed under this section for taxable events occurring on or after January 1, 2012. [2009 c 535 § 513; 2006 c 182 § 3; 2004 c 24 § 10.]

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Intent—Effective date—2004 c 24: See notes following RCW 82.04.2909.

82.08.806 Exemptions—Sale of computer equipment parts and services to printer or publisher. (1) The tax levied by RCW 82.08.020 does not apply to sales, to a printer or publisher, of computer equipment, including repair parts and replacement parts for such equipment, when the computer equipment is used primarily in the printing or publishing of any printed material, or to sales of or charges made for labor and services rendered in respect to installing, repairing, cleaning, altering, or improving the computer equipment. This exemption applies only to computer equipment not otherwise exempt under RCW 82.08.02565.

(2) A person taking the exemption under this section must keep records necessary for the department to verify eligibility under this section. This exemption is available only

when the purchaser provides the seller with an exemption certificate in a form and manner prescribed by the department. The seller shall retain a copy of the certificate for the seller's files.

(3) The definitions in this subsection (3) apply throughout this section, unless the context clearly requires otherwise.

(a) "Computer" has the same meaning as in RCW 82.04.215.

(b) "Computer equipment" means a computer and the associated physical components that constitute a computer system, including monitors, keyboards, printers, modems, scanners, pointing devices, and other computer peripheral equipment, cables, servers, and routers. "Computer equipment" also includes digital cameras and computer software.

(c) "Computer software" has the same meaning as in RCW 82.04.215.

(d) "Primarily" means greater than fifty percent as measured by time.

(e) "Printer or publisher" means a person, as defined in RCW 82.04.030, who is subject to tax under RCW 82.04.260(14) or 82.04.280(1).

(4) "Computer equipment" does not include computer equipment that is used primarily for administrative purposes including but not limited to payroll processing, accounting, customer service, telemarketing, and collection. If computer equipment is used simultaneously for administrative and nonadministrative purposes, the administrative use shall be disregarded during the period of simultaneous use for purposes of determining whether the computer equipment is used primarily for administrative purposes. [2009 c 461 § 5; 2004 c 8 § 2.]

Effective date—Contingent effective date—2009 c 461: See note following RCW 82.04.280.

Findings—Intent—2004 c 8: "(1) The legislature finds that the manufacturer's machinery and equipment sales and use tax exemption is vital to the continued development of economic opportunity in this state, including the development of new businesses and the expansion or modernization of existing businesses.

(2) The legislature finds that the printing and publishing industries have not been able to realize the benefits of the manufacturer's machinery and equipment sales and use tax exemption to the same extent as other manufacturing industries due to dramatic changes in business methods caused by computer technology not contemplated when the manufacturer's machinery and equipment sales and use tax exemption was adopted. As a result of these changes in business methods, a substantial amount of computer equipment used by printers and publishers is not eligible for the manufacturer's machinery and equipment sales and use tax exemption because the computer equipment is not used within the manufacturing site.

(3) The legislature further finds that additional incentives for printers and publishers need to be adopted to provide these industries with similar benefits as the manufacturer's machinery and equipment sales and use tax exemption provides for other manufacturing industries, and in recognition of the rapid rate of technological advancement in business methods undergone by the printing and publishing industries. The legislature intends to accomplish this by providing a sales and use tax exemption to printers and publishers for computer equipment, not otherwise eligible for the manufacturer's machinery and equipment sales and use tax exemption, used primarily in the printing or publishing of printed material, and for labor and services rendered in respect to installing, repairing, cleaning, altering, or improving such computer equipment." [2004 c 8 § 1.]

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

82.08.816 Exemptions—Electric vehicle batteries and infrastructure. ***(Expires January 1, 2020.)*** (1) The tax imposed by RCW 82.08.020 does not apply to:

(a) The sale of batteries for electric vehicles;

(b) The sale of or charge made for labor and services rendered in respect to installing, repairing, altering, or improving electric vehicle batteries;

(c) The sale of or charge made for labor and services rendered in respect to installing, constructing, repairing, or improving electric vehicle infrastructure; and

(d) The sale of tangible personal property that will become a component of electric vehicle infrastructure during the course of installing, constructing, repairing, or improving electric vehicle infrastructure.

(2) Sellers may make tax exempt sales under this section only if the buyer provides the seller with an exemption certification in a form and manner prescribed by the department. The seller must retain a copy of the certificate for the seller's files.

(3) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Battery charging station" means an electrical component assembly or cluster of component assemblies designed specifically to charge batteries within electric vehicles, which meet or exceed any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

(b) "Battery exchange station" means a fully automated facility that will enable an electric vehicle with a swappable battery to enter a drive lane and exchange the depleted battery with a fully charged battery through a fully automated process, which meets or exceeds any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

(c) "Electric vehicle infrastructure" means structures, machinery, and equipment necessary and integral to support an electric vehicle, including battery charging stations, rapid charging stations, and battery exchange stations.

(d) "Rapid charging station" means an industrial grade electrical outlet that allows for faster recharging of electric vehicle batteries through higher power levels, which meets or exceeds any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

(4) This section expires January 1, 2020. [2009 c 459 § 4.]

Finding—Purpose—2009 c 459: See note following RCW 47.80.090.

Regional transportation planning organizations—Electric vehicle infrastructure: RCW 47.80.090.

82.08.890 Exemptions—Qualifying livestock nutrient management equipment and facilities. (1) The tax levied by RCW 82.08.020 does not apply to sales to eligible persons of:

(a) Qualifying livestock nutrient management equipment;

(b) Labor and services rendered in respect to installing, repairing, cleaning, altering, or improving qualifying livestock nutrient management equipment; and

(c)(i) Labor and services rendered in respect to repairing, cleaning, altering, or improving of qualifying livestock nutri-

ent management facilities, or to tangible personal property that becomes an ingredient or component of qualifying livestock nutrient management facilities in the course of repairing, cleaning, altering, or improving of such facilities.

(ii) The exemption provided in this subsection (1)(c) does not apply to the sale of or charge made for: (A) Labor and services rendered in respect to the constructing of new, or replacing previously existing, qualifying livestock nutrient management facilities; or (B) tangible personal property that becomes an ingredient or component of qualifying livestock nutrient management facilities during the course of constructing new, or replacing previously existing, qualifying livestock nutrient management facilities.

(2) The exemption provided in subsection (1) of this section applies to sales made after the livestock nutrient management plan is: (a) Certified under chapter 90.64 RCW; (b) approved as part of the permit issued under chapter 90.48 RCW; or (c) approved as required under subsection (4)(c)(iii) of this section.

(3)(a) The department of revenue must provide an exemption certificate to an eligible person upon application by that person. The department of agriculture must provide a list of eligible persons, as defined in subsection (4)(c)(i) and (ii) of this section, to the department of revenue. Conservation districts must maintain lists of eligible persons as defined in subsection (4)(c)(iii) of this section to allow the department of revenue to verify eligibility. The application must be in a form and manner prescribed by the department and must contain information regarding the location of the dairy or animal feeding operation and other information the department may require.

(b) A person claiming an exemption under this section must keep records necessary for the department to verify eligibility under this section. The exemption is available only when the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department. The seller must retain a copy of the certificate for the seller's files.

(4) The definitions in this subsection apply to this section and RCW 82.12.890 unless the context clearly requires otherwise:

(a) "Animal feeding operation" means a lot or facility, other than an aquatic animal production facility, where the following conditions are met:

(i) Animals, other than aquatic animals, have been, are, or will be stabled or confined and fed or maintained for a total of forty-five days or more in any twelve-month period; and

(ii) Crops, vegetation, forage growth, or postharvest residues are not sustained in the normal growing season over any portion of the lot or facility.

(b) "Conservation district" means a subdivision of state government organized under chapter 89.08 RCW.

(c) "Eligible person" means a person: (i) Licensed to produce milk under chapter 15.36 RCW who has a certified dairy nutrient management plan, as required by chapter 90.64 RCW; (ii) who owns an animal feeding operation and has a permit issued under chapter 90.48 RCW; or (iii) who owns an animal feeding operation and has a nutrient management plan approved by a conservation district as meeting natural resource conservation service field office technical guide standards and who possesses an exemption certificate under RCW 82.08.855.

(d) "Handling and treatment of livestock manure" means the activities of collecting, storing, moving, or transporting livestock manure, separating livestock manure solids from liquids, or applying livestock manure to the agricultural lands of an eligible person other than through the use of pivot or linear type traveling irrigation systems.

(e) "Permit" means either a state waste discharge permit or a national pollutant discharge elimination system permit, or both.

(f) "Qualifying livestock nutrient management equipment" means the following tangible personal property for exclusive use in the handling and treatment of livestock manure, including repair and replacement parts for such equipment: (i) Aerators; (ii) agitators; (iii) augers; (iv) conveyers; (v) gutter cleaners; (vi) hard-hose reel traveler irrigation systems; (vii) lagoon and pond liners and floating covers; (viii) loaders; (ix) manure composting devices; (x) manure spreaders; (xi) manure tank wagons; (xii) manure vacuum tanks; (xiii) poultry house cleaners; (xiv) poultry house flame sterilizers; (xv) poultry house washers; (xvi) poultry litter saver machines; (xvii) pipes; (xviii) pumps; (xix) scrapers; (xx) separators; (xxi) slurry injectors and hoses; and (xxii) wheelbarrows, shovels, and pitchforks.

(g) "Qualifying livestock nutrient management facilities" means the following structures and facilities for exclusive use in the handling and treatment of livestock manure: (i) Flush systems; (ii) lagoons; (iii) liquid livestock manure storage structures, such as concrete tanks or glass-lined steel tanks; and (iv) structures used solely for the dry storage of manure, including roofed stacking facilities. [2009 c 469 § 601; 2006 c 151 § 2; 2001 2nd sp.s. c 18 § 2.]

Effective date—2009 c 469: See note following RCW 82.08.962.

Effective date—2006 c 151: "This act takes effect July 1, 2006." [2006 c 151 § 7.]

Intent—2001 2nd sp.s. c 18: "It is the intent of the legislature to provide tax exemptions to assist dairy farmers to comply with the dairy nutrient management act, chapter 90.64 RCW, to encourage owners of nondairy animal feeding operations to develop and implement approved nutrient management plans, and to assist public or private entities to establish and operate anaerobic digesters to treat livestock nutrients on a regional or on-farm basis." [2006 c 151 § 1; 2001 2nd sp.s. c 18 § 1.]

Effective date—2001 2nd sp.s. c 18: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [July 13, 2001]." [2001 2nd sp.s. c 18 § 6.]

82.08.956 Exemptions—Hog fuel used to generate electricity, steam, heat, or biofuel. ***(Expires June 30, 2013.)*** (1) The tax levied by RCW 82.08.020 does not apply to sales of hog fuel used to produce electricity, steam, heat, or biofuel. This exemption is available only if the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department. The seller must retain a copy of the certificate for the seller's files.

(2) For the purposes of this section the following definitions apply:

(a) "Hog fuel" means wood waste and other wood residuals including forest derived biomass. "Hog fuel" does not include firewood or wood pellets; and

(b) "Biofuel" has the same meaning as provided in RCW 43.325.010.

(3) This section expires June 30, 2013. [2009 c 469 § 301.]

Effective date—2009 c 469: See note following RCW 82.08.962.

82.08.957 Exemptions—Forest derived biomass. *(*Expires June 30, 2013.) (1) The tax levied by RCW 82.08.020 does not apply to sales of forest derived biomass used to produce electricity, steam, heat, or biofuel. This exemption is available only if the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department. The seller must retain a copy of the certificate for the seller's files.

(2) For purposes of this section, "biofuel" is defined in RCW 43.325.010.

(3) This section expires June 30, 2013. [2009 c 469 § 402.]

Effective date—2009 c 469: See note following RCW 82.08.962.

82.08.962 Exemptions—Sales of machinery and equipment used in generating electricity. *(Expires July 1, 2013.)* (1)(a) Except as provided in RCW 82.08.963, purchasers who have paid the tax imposed by RCW 82.08.020 on machinery and equipment used directly in generating electricity using fuel cells, wind, sun, biomass energy, tidal or wave energy, geothermal resources, anaerobic digestion, technology that converts otherwise lost energy from exhaust, or landfill gas as the principal source of power, or to sales of or charges made for labor and services rendered in respect to installing such machinery and equipment, are eligible for an exemption as provided in this section, but only if the purchaser develops with such machinery, equipment, and labor a facility capable of generating not less than one thousand watts of electricity.

(b) Beginning on July 1, 2009, through June 30, 2011, the tax levied by RCW 82.08.020 does not apply to the sale of machinery and equipment described in (a) of this subsection that are used directly in generating electricity or to sales of or charges made for labor and services rendered in respect to installing such machinery and equipment.

(c) Beginning on July 1, 2011, through June 30, 2013, the amount of the exemption under this subsection (1) is equal to seventy-five percent of the state and local sales tax paid. The purchaser is eligible for an exemption under this subsection (1)(c) in the form of a remittance.

(2) For purposes of this section and RCW 82.12.962, the following definitions apply:

(a) "Biomass energy" includes: (i) By-products of pulping and wood manufacturing process; (ii) animal waste; (iii) solid organic fuels from wood; (iv) forest or field residues; (v) wooden demolition or construction debris; (vi) food waste; (vii) liquors derived from algae and other sources; (viii) dedicated energy crops; (ix) biosolids; and (x) yard waste. "Biomass energy" does not include wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenic; wood from old growth forests; or municipal solid waste.

(b) "Fuel cell" means an electrochemical reaction that generates electricity by combining atoms of hydrogen and oxygen in the presence of a catalyst.

(c) "Landfill gas" means biomass fuel, of the type qualified for federal tax credits under Title 26 U.S.C. Sec. 29 of the federal internal revenue code, collected from a "landfill" as defined under RCW 70.95.030.

(d)(i) "Machinery and equipment" means fixtures, devices, and support facilities that are integral and necessary to the generation of electricity using fuel cells, wind, sun, biomass energy, tidal or wave energy, geothermal resources, anaerobic digestion, technology that converts otherwise lost energy from exhaust, or landfill gas as the principal source of power.

(ii) "Machinery and equipment" does not include: (A) Hand-powered tools; (B) property with a useful life of less than one year; (C) repair parts required to restore machinery and equipment to normal working order; (D) replacement parts that do not increase productivity, improve efficiency, or extend the useful life of machinery and equipment; (E) buildings; or (F) building fixtures that are not integral and necessary to the generation of electricity that are permanently affixed to and become a physical part of a building.

(3)(a) Machinery and equipment is "used directly" in generating electricity by wind energy, solar energy, biomass energy, tidal or wave energy, geothermal resources, anaerobic digestion, technology that converts otherwise lost energy from exhaust, or landfill gas power if it provides any part of the process that captures the energy of the wind, sun, biomass energy, tidal or wave energy, geothermal resources, anaerobic digestion, technology that converts otherwise lost energy from exhaust, or landfill gas, converts that energy to electricity, and stores, transforms, or transmits that electricity for entry into or operation in parallel with electric transmission and distribution systems.

(b) Machinery and equipment is "used directly" in generating electricity by fuel cells if it provides any part of the process that captures the energy of the fuel, converts that energy to electricity, and stores, transforms, or transmits that electricity for entry into or operation in parallel with electric transmission and distribution systems.

(4)(a) A purchaser claiming an exemption in the form of a remittance under subsection (1)(c) of this section must pay the tax imposed by RCW 82.08.020 and all applicable local sales taxes imposed under the authority of chapters 82.14 and 81.104 RCW. The purchaser may then apply to the department for remittance in a form and manner prescribed by the department. A purchaser may not apply for a remittance under this section more frequently than once per quarter. The purchaser must specify the amount of exempted tax claimed and the qualifying purchases for which the exemption is claimed. The purchaser must retain, in adequate detail, records to enable the department to determine whether the purchaser is entitled to an exemption under this section, including: Invoices; proof of tax paid; and documents describing the machinery and equipment.

(b) The department must determine eligibility under this section based on the information provided by the purchaser, which is subject to audit verification by the department. The department must on a quarterly basis remit exempted amounts to qualifying purchasers who submitted applications during the previous quarter.

(5) This section expires July 1, 2013. [2009 c 469 § 101.]

Effective date—2009 c 469: "Except for sections 801 and 802 of this act, this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2009." [2009 c 469 § 902.]

82.08.963 Exemptions—Sales of machinery and equipment using solar energy to generate electricity. ***(Expires June 30, 2013.)*** (1) The tax levied by RCW 82.08.020 does not apply to sales of machinery and equipment used directly in generating electricity using solar energy, or to sales of or charges made for labor and services rendered in respect to installing such machinery and equipment, but only if the purchaser develops with such machinery, equipment, and labor a facility capable of generating not more than ten kilowatts of electricity and provides the seller with an exemption certificate in a form and manner prescribed by the department. The seller must retain a copy of the certificate for the seller's files.

(2) For purposes of this section and RCW 82.12.963:

(a) "Machinery and equipment" means industrial fixtures, devices, and support facilities that are integral and necessary to the generation of electricity using solar energy;

(b) "Machinery and equipment" does not include: (i) Hand-powered tools; (ii) property with a useful life of less than one year; (iii) repair parts required to restore machinery and equipment to normal working order; (iv) replacement parts that do not increase productivity, improve efficiency, or extend the useful life of machinery and equipment; (v) buildings; or (vi) building fixtures that are not integral and necessary to the generation of electricity that are permanently affixed to and become a physical part of a building; and

(c) Machinery and equipment is "used directly" in generating electricity with solar energy if it provides any part of the process that captures the energy of the sun, converts that energy to electricity, and stores, transforms, or transmits that electricity for entry into or operation in parallel with electric transmission and distribution systems.

(3) This section expires June 30, 2013. [2009 c 469 § 103.]

Effective date—2009 c 469: See note following RCW 82.08.962.

82.08.9651 Exemptions—Gases and chemicals used in production of semiconductor materials. ***(Expires December 1, 2018.)*** (1) The tax levied by RCW 82.08.020 does not apply to sales of gases and chemicals used by a manufacturer or processor for hire in the production of semiconductor materials. This exemption is limited to gases and chemicals used in the production process to grow the product, deposit or grow permanent or sacrificial layers on the product, to etch or remove material from the product, to anneal the product, to immerse the product, to clean the product, and other such uses whereby the gases and chemicals come into direct contact with the product during the production process, or uses of gases and chemicals to clean the chambers and other like equipment in which such processing takes place. For the purposes of this section, "semiconductor materials" has the meaning provided in RCW 82.04.2404 and 82.04.294(3).

(2) A person taking the exemption under this section must report under RCW 82.32.5351. No application is necessary for the tax exemption. The person is subject to all of the requirements of chapter 82.32 RCW.

(3) This section expires twelve years after December 1, 2006. [2009 c 469 § 502; 2006 c 84 § 3.]

Effective date—2009 c 469: See note following RCW 82.08.962.

Effective date—2006 c 84 §§ 2-8: See note following RCW 82.04.2404.

Findings—Intent—2006 c 84: See note following RCW 82.04.2404.

82.08.995 Exemptions—Certain limited purpose public corporations, commissions, and authorities. (1) The tax imposed by RCW 82.08.020 does not apply to sales of personal property and services provided by a public corporation, commission, or authority created under RCW 35.21.660 or 35.21.730 to an eligible entity.

(2) For purposes of this section, "eligible entity" means a limited liability company, a limited partnership, or a single asset entity, described in RCW 82.04.615. [2009 c 535 § 514; 2007 c 381 § 2.]

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Chapter 82.12 RCW
USE TAX

Sections

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82.12.010 Definitions. For the purposes of this chapter:

(1) "Purchase price" means the same as sales price as defined in RCW 82.08.010;

(2)(a) "Value of the article used" shall be the purchase price for the article of tangible personal property, the use of which is taxable under this chapter. The term also includes, in addition to the purchase price, the amount of any tariff or duty paid with respect to the importation of the article used. In case the article used is acquired by lease or by gift or is extracted, produced, or manufactured by the person using the same or is sold under conditions wherein the purchase price does not represent the true value thereof, the value of the article used shall be determined as nearly as possible according to the retail selling price at place of use of similar products of like quality and character under such rules as the department may prescribe.

(b) In case the articles used are acquired by bailment, the value of the use of the articles so used shall be in an amount representing a reasonable rental for the use of the articles so bailed, determined as nearly as possible according to the value of such use at the places of use of similar products of like quality and character under such rules as the department of revenue may prescribe. In case any such articles of tangible personal property are used in respect to the construction, repairing, decorating, or improving of, and which become or are to become an ingredient or component of, new or existing buildings or other structures under, upon, or above real property of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW, including the installing or attaching of any such articles therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation, then the value of the use of such articles so used shall be determined according to the retail selling price of such articles, or in the absence of such a selling price, as nearly as possible according to the retail selling price at place of use of similar products of like quality and character or, in the absence of either of these selling price measures, such value may be determined upon a cost basis, in any event under such rules as the department of revenue may prescribe.

(c) In the case of articles owned by a user engaged in business outside the state which are brought into the state for no more than one hundred eighty days in any period of three hundred sixty-five consecutive days and which are temporarily used for business purposes by the person in this state, the value of the article used shall be an amount representing a reasonable rental for the use of the articles, unless the person has paid tax under this chapter or chapter 82.08 RCW upon the full value of the article used, as defined in (a) of this subsection.

(d) In the case of articles manufactured or produced by the user and used in the manufacture or production of products sold or to be sold to the department of defense of the United States, the value of the articles used shall be determined according to the value of the ingredients of such articles.

(e) In the case of an article manufactured or produced for purposes of serving as a prototype for the development of a new or improved product, the value of the article used shall be determined by: (i) The retail selling price of such new or improved product when first offered for sale; or (ii) the value of materials incorporated into the prototype in cases in which the new or improved product is not offered for sale.

(f) In the case of an article purchased with a direct pay permit under RCW 82.32.087, the value of the article used shall be determined by the purchase price of such article if, but for the use of the direct pay permit, the transaction would have been subject to sales tax;

(3) "Value of the service used" means the purchase price for the digital automated service or other service, the use of which is taxable under this chapter. If the service is received by gift or under conditions wherein the purchase price does not represent the true value thereof, the value of the service used shall be determined as nearly as possible according to the retail selling price at place of use of similar services of like quality and character under rules the department may prescribe;

(4) "Value of the extended warranty used" means the purchase price for the extended warranty, the use of which is taxable under this chapter. If the extended warranty is received by gift or under conditions wherein the purchase price does not represent the true value of the extended warranty, the value of the extended warranty used shall be determined as nearly as possible according to the retail selling price at place of use of similar extended warranties of like quality and character under rules the department may prescribe;

(5) "Value of the digital good or digital code used" means the purchase price for the digital good or digital code, the use of which is taxable under this chapter. If the digital good or digital code is acquired other than by purchase, the value of the digital good or digital code must be determined as nearly as possible according to the retail selling price at place of use of similar digital goods or digital codes of like quality and character under rules the department may prescribe;

(6) "Use," "used," "using," or "put to use" have their ordinary meaning, and mean:

(a) With respect to tangible personal property, the first act within this state by which the taxpayer takes or assumes dominion or control over the article of tangible personal property (as a consumer), and include installation, storage, withdrawal from storage, distribution, or any other act preparatory to subsequent actual use or consumption within this state;

(b) With respect to a service defined in RCW 82.04.050(2)(a), the first act within this state after the service has been performed by which the taxpayer takes or assumes dominion or control over the article of tangible personal property upon which the service was performed (as a consumer), and includes installation, storage, withdrawal from storage, distribution, or any other act preparatory to subsequent actual use or consumption of the article within this state;

(c) With respect to an extended warranty, the first act within this state after the extended warranty has been acquired by which the taxpayer takes or assumes dominion or control over the article of tangible personal property to which the extended warranty applies, and includes installation, storage, withdrawal from storage, distribution, or any other act preparatory to subsequent actual use or consumption of the article within this state;

(d) With respect to a digital good or digital code, the first act within this state by which the taxpayer, as a consumer, views, accesses, downloads, possesses, stores, opens, manipulates, or otherwise uses or enjoys the digital good or digital code;

(e) With respect to a digital automated service, the first act within this state by which the taxpayer, as a consumer, uses, enjoys, or otherwise receives the benefit of the service;

(f) With respect to a service defined as a retail sale in RCW 82.04.050(6)(b), the first act within this state by which the taxpayer, as a consumer, accesses the prewritten computer software; and

(g) With respect to a service defined as a retail sale in RCW 82.04.050(2)(g), the first act within this state after the service has been performed by which the taxpayer, as a consumer, views, accesses, downloads, possesses, stores, opens, manipulates, or otherwise uses or enjoys the digital good upon which the service was performed;

(7) "Taxpayer" and "purchaser" include all persons included within the meaning of the word "buyer" and the word "consumer" as defined in chapters 82.04 and 82.08 RCW;

(8)(a)(i) Except as provided in (a)(ii) of this subsection (8), "retailer" means every seller as defined in RCW 82.08.010 and every person engaged in the business of selling tangible personal property at retail and every person required to collect from purchasers the tax imposed under this chapter.

(ii) "Retailer" does not include a professional employer organization when a covered employee coemployed with the client under the terms of a professional employer agreement engages in activities that constitute a sale of tangible personal property, extended warranty, digital good, digital code, or a sale of any digital automated service or service defined as a retail sale in RCW 82.04.050 (2) (a) or (g), (3)(a), or (6)(b) that is subject to the tax imposed by this chapter. In such cases, the client, and not the professional employer organization, is deemed to be the retailer and is responsible for collecting and remitting the tax imposed by this chapter.

(b) For the purposes of (a) of this subsection, the terms "client," "covered employee," "professional employer agreement," and "professional employer organization" have the same meanings as in RCW 82.04.540;

(9) "Extended warranty" has the same meaning as in RCW 82.04.050(7);

(10) The meaning ascribed to words and phrases in chapters 82.04 and 82.08 RCW, insofar as applicable, shall have full force and effect with respect to taxes imposed under the provisions of this chapter. "Consumer," in addition to the meaning ascribed to it in chapters 82.04 and 82.08 RCW insofar as applicable, shall also mean any person who distributes or displays, or causes to be distributed or displayed, any article of tangible personal property, except newspapers, the primary purpose of which is to promote the sale of products or services. With respect to property distributed to persons within this state by a consumer as defined in this subsection (10), the use of the property shall be deemed to be by such consumer. [2009 c 535 § 304; 2006 c 301 § 3; 2005 c 514 § 104. Prior: 2003 c 168 § 102; 2003 c 5 § 1; 2002 c 367 § 3; 2001 c 188 § 3; 1994 c 93 § 1; prior: 1985 c 222 § 1; 1985 c 132 § 1; 1983 1st ex.s. c 55 § 2; 1975-'76 2nd ex.s. c 1 § 1; 1975 1st ex.s. c 278 § 52; 1965 ex.s. c 173 § 17; 1961 c 293 § 15; 1961 c 15 § 82.12.010; prior: 1955 c 389 § 24; 1951 1st ex.s. c 9 § 3; 1949 c 228 § 9; 1945 c 249 § 8; 1943 c 156 § 10; 1939 c 225 § 18; 1937 c 191 § 4; 1935 c 180 § 35; Rem. Supp. 1949 § 8370-35.]

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Effective date—Act does not affect application of Title 50 or 51 RCW—2006 c 301: See notes following RCW 82.32.710.

Effective date—2005 c 514: See note following RCW 83.100.230.

Part headings not law—Severability—2005 c 514: See notes following RCW 82.12.808.

Effective dates—Part headings not law—2003 c 168: See notes following RCW 82.08.010.

Finding—Intent—Retroactive application—2003 c 5: "The legislature finds that in the enactment of chapter 367, Laws of 2002, some use tax exemptions were not updated to reflect the change in taxability regarding services. It is the legislature's intent to correct this omission by amending the various use tax exemptions so that services exempt from the sales tax are also exempt from the use tax. Sections 1 through 19 of this act apply retroactively to June 1, 2002. The department of revenue shall refund any use taxes paid and forgive use taxes unpaid as a result of the omission." [2003 c 5 § 20.]

Effective date—2003 c 5: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 18, 2003]." [2003 c 5 § 21.]

Severability—Effective date—2002 c 367: See notes following RCW 82.04.060.

Finding—Intent—Effective date—2001 c 188: See notes following RCW 82.32.087.

Effective date—1994 c 93: "This act shall take effect July 1, 1994." [1994 c 93 § 3.]

Effective dates—1983 1st ex.s. c 55: See note following RCW 82.08.010.

Application to preexisting contracts—1975-'76 2nd ex.s. c 1; 1975 1st ex.s. c 90: "In the event any person has entered into a contract prior to July 1, 1975 or has bid upon a contract prior to July 1, 1975 and has been awarded the contract after July 1, 1975, the additional taxes imposed by chapter 90, Laws of 1975 1st ex. sess., section 5, chapter 291, Laws of 1975 1st ex. sess. and this 1975 amendatory act shall not be required to be paid by

such person in carrying on activities in the fulfillment of such contract." [1975-'76 2nd ex.s. c 1 § 3; 1975 1st ex.s. c 90 § 4.]

Severability—1975-'76 2nd ex.s. c 1: "If any provision of this 1975 amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1975-'76 2nd ex.s. c 1 § 4.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

Effective date—1965 ex.s. c 173: See note following RCW 82.04.050.

82.12.020 Use tax imposed. (1) There is hereby levied and there shall be collected from every person in this state a tax or excise for the privilege of using within this state as a consumer any:

(a) Article of tangible personal property purchased at retail, or acquired by lease, gift, repossession, or bailment, or extracted or produced or manufactured by the person so using the same, or otherwise furnished to a person engaged in any business taxable under RCW 82.04.280 (2) or (7), including tangible personal property acquired at a casual or isolated sale, and including byproducts used by the manufacturer thereof, except as otherwise provided in this chapter, irrespective of whether the article or similar articles are manufactured or are available for purchase within this state;

(b) Prewritten computer software, regardless of the method of delivery, but excluding prewritten computer software that is either provided free of charge or is provided for temporary use in viewing information, or both;

(c) Services defined as a retail sale in RCW 82.04.050 (2) (a) or (g), (3)(a), or (6)(b), excluding services defined as a retail sale in RCW 82.04.050(6)(b) that are provided free of charge;

(d) Extended warranty; or

(e)(i) Digital good, digital code, or digital automated service, including the use of any services provided by a seller exclusively in connection with digital goods, digital codes, or digital automated services, whether or not a separate charge is made for such services.

(ii) With respect to the use of digital goods, digital automated services, and digital codes acquired by purchase, the tax imposed in this subsection (1)(e) applies in respect to:

(A) Sales in which the seller has granted the purchaser the right of permanent use;

(B) Sales in which the seller has granted the purchaser a right of use that is less than permanent;

(C) Sales in which the purchaser is not obligated to make continued payment as a condition of the sale; and

(D) Sales in which the purchaser is obligated to make continued payment as a condition of the sale.

(iii) With respect to digital goods, digital automated services, and digital codes acquired other than by purchase, the tax imposed in this subsection (1)(e) applies regardless of whether or not the consumer has a right of permanent use or is obligated to make continued payment as a condition of use.

(2) The provisions of this chapter do not apply in respect to the use of any article of tangible personal property, extended warranty, digital good, digital code, digital automated service, or service taxable under RCW 82.04.050 (2) (a) or (g), (3)(a), or (6)(b), if the sale to, or the use by, the present user or the present user's bailor or donor has already been subjected to the tax under chapter 82.08 RCW or this chapter and the tax has been paid by the present user or by the present user's bailor or donor.

(3)(a) Except as provided in this section, payment of the tax imposed by this chapter or chapter 82.08 RCW by one purchaser or user of tangible personal property, extended warranty, digital good, digital code, digital automated service, or other service does not have the effect of exempting any other purchaser or user of the same property, extended warranty, digital good, digital code, digital automated service, or other service from the taxes imposed by such chapters.

(b) The tax imposed by this chapter does not apply:

(i) If the sale to, or the use by, the present user or his or her bailor or donor has already been subjected to the tax under chapter 82.08 RCW or this chapter and the tax has been paid by the present user or by his or her bailor or donor;

(ii) In respect to the use of any article of tangible personal property acquired by bailment and the tax has once been paid based on reasonable rental as determined by RCW 82.12.060 measured by the value of the article at time of first use multiplied by the tax rate imposed by chapter 82.08 RCW or this chapter as of the time of first use;

(iii) In respect to the use of any article of tangible personal property acquired by bailment, if the property was acquired by a previous bailee from the same bailor for use in the same general activity and the original bailment was prior to June 9, 1961; or

(iv) To the use of digital goods or digital automated services, which were obtained through the use of a digital code, if the sale of the digital code to, or the use of the digital code by, the present user or the present user's bailor or donor has already been subjected to the tax under chapter 82.08 RCW or this chapter and the tax has been paid by the present user or by the present user's bailor or donor.

(4)(a) Except as provided in (b) of this subsection (4), the tax is levied and must be collected in an amount equal to the value of the article used, value of the digital good or digital code used, value of the extended warranty used, or value of the service used by the taxpayer, multiplied by the applicable rates in effect for the retail sales tax under RCW 82.08.020.

(b) In the case of a seller required to collect use tax from the purchaser, the tax must be collected in an amount equal to the purchase price multiplied by the applicable rate in effect for the retail sales tax under RCW 82.08.020. [2009 c 535 § 305; 2005 c 514 § 105. Prior: 2003 c 361 § 302; 2003 c 168 § 214; 2003 c 5 § 2; 2002 c 367 § 4; 1999 c 358 § 9; 1998 c 332 § 7; 1996 c 148 § 5; 1994 c 93 § 2; 1983 c 7 § 7; 1981 2nd ex.s. c 8 § 2; 1980 c 37 § 79; 1977 ex.s. c 324 § 3; 1975-'76 2nd ex.s. c 130 § 2; 1975-'76 2nd ex.s. c 1 § 2; 1971 ex.s. c 281 § 10; 1969 ex.s. c 262 § 32; 1967 ex.s. c 149 § 22; 1965 ex.s. c 173 § 18; 1961 c 293 § 9; 1961 c 15 § 82.12.020; prior: 1959 ex.s. c 3 § 10; 1955 ex.s. c 10 § 3; 1955 c 389 § 25; 1949 c 228 § 7; 1943 c 156 § 8; 1941 c 76 § 6; 1939 c 225 § 14; 1937 c 191 § 1; 1935 c 180 § 31; Rem. Supp. 1949 § 8370-31.]

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Effective date—2005 c 514: See note following RCW 83.100.230.

Part headings not law—Severability—2005 c 514: See notes following RCW 82.12.808.

Effective dates—2003 c 361: See note following RCW 82.08.020.

Findings—Part headings not law—Severability—2003 c 361: See notes following RCW 82.36.025.

Effective dates—Part headings not law—2003 c 168: See notes following RCW 82.08.010.

Finding—Intent—Retroactive application—Effective date—2003 c 5: See notes following RCW 82.12.010.

Severability—Effective date—2002 c 367: See notes following RCW 82.04.060.

Effective date—1999 c 358 §§ 1 and 3-21: See note following RCW 82.04.3651.

Findings—Intent—Effective date—1998 c 332: See notes following RCW 82.04.29001.

Severability—Effective date—1996 c 148: See notes following RCW 82.04.050.

Effective date—1994 c 93: See note following RCW 82.12.010.

Construction—Severability—Effective dates—1983 c 7: See notes following RCW 82.08.020.

Intent—1980 c 37: See note following RCW 82.04.4281.

Effective date—1975-'76 2nd ex.s. c 130: See note following RCW 82.08.020.

Application to preexisting contracts—1975-'76 2nd ex.s. c 1: See note following RCW 82.12.010.

Severability—1975-'76 2nd ex.s. c 1: See note following RCW 82.12.010.

High capacity transportation systems—Sales and use tax: RCW 81.104.170.

82.12.0208 Exemptions—Digital codes. The provisions of this chapter do not apply in respect to the use of a digital code for one or more digital products, if the use of the digital products to which the digital code relates is exempt from the tax levied by RCW 82.12.020. [2009 c 535 § 601.]

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

82.12.02081 Exemptions—Audio or video programming. (1) Except as provided in subsection (2) of this section, the provisions of this chapter do not apply to the use of audio or video programming provided by a radio or television broadcaster.

(2)(a) Except as provided in (b) of this subsection, the exemption provided in subsection (1) of this section does not apply in respect to programming that is sold on a pay-per-program basis or that allows the buyer to access a library of programs at any time for a specific charge for that service.

(b) Notwithstanding (a) of this subsection, the exemption provided in this section applies to the sale of programming described in (a) of this subsection if the seller is subject to a franchise fee in this state under the authority of Title 47 U.S.C. Sec. 542(a) on the gross revenue derived from the sale.

(3) For purposes of this section, "radio or television broadcaster" includes satellite radio providers, satellite television providers, cable television providers, providers of subscription internet television, and persons who provide radio or television broadcasting to listeners or viewers for no charge. [2009 c 535 § 602.]

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

82.12.02082 Exemptions—Digital products or services—Ingredient or component—Made available for free. The provisions of this chapter do not apply to the use of digital goods, digital codes, digital automated services, or services defined as a retail sale in RCW 82.04.050(6)(b) for purposes of:

(1) Consuming the digital good, digital code, digital automated service, or service defined as a retail sale in RCW 82.04.050(6)(b) in producing for sale a new product, where the digital good, digital code, digital automated service, or service defined as a retail sale in RCW 82.04.050(6)(b) becomes an ingredient or component of the new product. A digital code becomes an ingredient or component of a new product if the digital good or digital automated service acquired through the use of the digital code becomes an ingredient or component of a new product; or

(2) Making the digital good or digital automated service, including a digital good or digital automated service acquired through the use of a digital code, or service defined as a retail sale in RCW 82.04.050(6)(b) available free of charge for the use or enjoyment of others. [2009 c 535 § 603.]

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

82.12.02084 Exemptions—Digital goods—Use by students. The provisions of this chapter do not apply to the use by students of digital goods furnished by a public or private elementary or secondary school, or an institution of higher education as defined in sections 1001 or 1002 of the federal higher education act of 1965 (Title 20 U.S.C. Secs. 1001 and 1002), as existing on July 1, 2009. [2009 c 535 § 604.]

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

82.12.02085 Exemptions—Digital goods—Noncommercial—Internal audience—Not for sale. (1) The provisions of this chapter do not apply in respect to the use of digital goods that are:

(a) Of a noncommercial nature, such as personal e-mail communications;

(b) Created solely for an internal audience; or

(c) Created solely for the business needs of the person who created the digital good and is not the type of digital good that is offered for sale, including business e-mail communications.

(2) This section does not apply to the use of any digital goods purchased by the user, the user's donor, or anybody on the user's behalf. [2009 c 535 § 605.]

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

82.12.02086 Exemptions—Digital products or codes—Free of charge. The provisions of this chapter do not apply in respect to the use of digital products or digital codes obtained by the end user free of charge. [2009 c 535 § 606.]

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

82.12.02087 Exemptions—Standard digital information and services—Used for business purposes. (1) The provisions of this chapter do not apply to the use by a business of standard digital information and services rendered in

respect to standard digital information, where the standard digital information and services are used solely for business purposes.

(2) For purposes of this section, the definitions in RCW 82.08.02087 apply. [2009 c 535 § 607.]

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

82.12.02088 Exemptions—Digital products—Business buyers—Concurrently available for use within and outside state—Apportionment. (1) A business or other organization subject to the tax imposed in RCW 82.12.020 on the use of digital goods, digital codes, digital automated services, prewritten computer software, or services defined as a retail sale in RCW 82.04.050(6)(b) that are concurrently available for use within and outside this state is entitled to apportion the amount of tax due this state based on users in this state compared to users everywhere. The department may authorize or require an alternative method of apportionment supported by the taxpayer's records that fairly reflects the proportion of in-state to out-of-state use by the taxpayer of the digital goods, digital automated services, prewritten computer software, or services defined as a retail sale in RCW 82.04.050(6)(b).

(2) No apportionment under this section is allowed unless the apportionment method is supported by the taxpayer's records kept in the ordinary course of business.

(3) For purposes of this section, the following definitions apply:

(a) "Concurrently available for use within and outside this state" means that employees or other agents of the taxpayer may use the digital goods, digital automated services, prewritten computer software, or services defined as a retail sale in RCW 82.04.050(6)(b) simultaneously at one or more locations within this state and one or more locations outside this state. A digital code is concurrently available for use within and outside this state if employees or other agents of the taxpayer may use the digital goods or digital automated services to be obtained by the code simultaneously at one or more locations within this state and one or more locations outside this state.

(b) "User" means an employee or agent of the taxpayer who is authorized by the taxpayer to use the digital goods, digital automated services, prewritten computer software, or services defined as a retail sale in RCW 82.04.050(6)(b) in the performance of his or her duties as an employee or other agent of the taxpayer. [2009 c 535 § 702.]

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

82.12.0251 Exemptions—Use of tangible personal property by nonresident while temporarily within state—Use of household goods, personal effects, and private motor vehicles acquired in another state while resident of other state—Use of certain warranties. The provisions of this chapter do not apply in respect to the use:

(1) Of any article of tangible personal property or any digital good or digital code, and any services that were rendered in respect to such property, brought into the state of Washington by a nonresident thereof for his or her use or enjoyment while temporarily within the state of Washington unless such property is used in conducting a nontransitory business activity within the state of Washington;

(2) By a nonresident of Washington of a motor vehicle or trailer which is registered or licensed under the laws of the state of his or her residence, and which is not required to be registered or licensed under the laws of Washington, including motor vehicles or trailers exempt pursuant to a declaration issued by the department of licensing under RCW 46.85.060, and services rendered outside the state of Washington in respect to such property;

(3) Of household goods, including digital goods, and digital codes, personal effects, private motor vehicles, and services rendered in respect to such property, by a bona fide resident of Washington, or nonresident members of the armed forces who are stationed in Washington pursuant to military orders, if such articles and services were acquired and used by such person in another state while a bona fide resident thereof and such acquisition and use occurred more than ninety days prior to the time he or she entered Washington. For purposes of this subsection, private motor vehicles do not include motor homes;

(4) Of an extended warranty, to the extent that the property covered by the extended warranty is exempt under this section from the tax imposed under this chapter.

For purposes of this section, "state" means a state of the United States, any political subdivision thereof, the District of Columbia, and any foreign country or political subdivision thereof, and "services" means services defined as retail sales in RCW 82.04.050(2) (a) or (g). [2009 c 535 § 608; 2005 c 514 § 106; 2003 c 5 § 18; 1997 c 301 § 1; 1987 c 27 § 1; 1985 c 353 § 4; 1983 c 26 § 2; 1980 c 37 § 51. Formerly RCW 82.12.030(1).]

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Effective date—2005 c 514: See note following RCW 83.100.230.

Part headings not law—Severability—2005 c 514: See notes following RCW 82.12.808.

Finding—Intent—Retroactive application—Effective date—2003 c 5: See notes following RCW 82.12.010.

Intent—1980 c 37: See note following RCW 82.04.4281.

82.12.02525 Exemptions—Sale of copied public records by state and local agencies. The provisions of this chapter do not apply with respect to the use of public records sold by state and local agencies, as the terms are defined in RCW 42.17.020, including public records transferred electronically that are obtained under a request for the record for which no fee is charged other than a statutorily set fee or a fee to reimburse the agency for its actual costs directly incident to the copying. A request for a record includes a request for a document not available to the public but available to those persons who by law are allowed access to the document, such as requests for fire reports, law enforcement reports, taxpayer information, and academic transcripts. [2009 c 535 § 609; 1996 c 63 § 2.]

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Effective date—1996 c 63: See note following RCW 82.08.02525.

82.12.0254 Exemptions—Use of airplanes, locomotives, railroad cars, or watercraft used in interstate or for-

eign commerce or outside state's territorial waters—Components—Use of motor vehicle or trailer in the transportation of persons or property across state boundaries—Conditions—Use of motor vehicle or trailer under one-transit permit to point outside state. (1) The provisions of this chapter do not apply in respect to the use of:

(a) Any airplane used primarily in (i) conducting interstate or foreign commerce or (ii) providing intrastate air transportation by a commuter air carrier as defined in RCW 82.08.0262;

(b) Any locomotive, railroad car, or watercraft used primarily in conducting interstate or foreign commerce by transporting therein or therewith property and persons for hire or used primarily in commercial deep sea fishing operations outside the territorial waters of the state;

(c) Tangible personal property that becomes a component part of any such airplane, locomotive, railroad car, or watercraft in the course of repairing, cleaning, altering, or improving the same; and

(d) Labor and services rendered in respect to such repairing, cleaning, altering, or improving.

(2) The provisions of this chapter do not apply in respect to the use by a nonresident of this state of any motor vehicle or trailer used exclusively in transporting persons or property across the boundaries of this state and in intrastate operations incidental thereto when such motor vehicle or trailer is registered and licensed in a foreign state and in respect to the use by a nonresident of this state of any motor vehicle or trailer so registered and licensed and used within this state for a period not exceeding fifteen consecutive days under such rules as the department must adopt. However, under circumstances determined to be justifiable by the department a second fifteen day period may be authorized consecutive with the first fifteen day period; and for the purposes of this exemption the term "nonresident" as used herein includes a user who has one or more places of business in this state as well as in one or more other states, but the exemption for nonresidents applies only to those vehicles which are most frequently dispatched, garaged, serviced, maintained, and operated from the user's place of business in another state.

(3) The provisions of this chapter do not apply in respect to the use by the holder of a carrier permit issued by the interstate commerce commission or its successor agency of any motor vehicle or trailer whether owned by or leased with or without driver to the permit holder and used in substantial part in the normal and ordinary course of the user's business for transporting therein persons or property for hire across the boundaries of this state; and in respect to the use of any motor vehicle or trailer while being operated under the authority of a one-transit permit issued by the director of licensing pursuant to RCW 46.16.160 and moving upon the highways from the point of delivery in this state to a point outside this state; and in respect to the use of tangible personal property which becomes a component part of any motor vehicle or trailer used by the holder of a carrier permit issued by the interstate commerce commission or its successor agency authorizing transportation by motor vehicle across the boundaries of this state whether such motor vehicle or trailer is owned by or leased with or without driver to the permit holder, in the course of repairing, cleaning, altering, or improving the same; also the use of labor and services rendered in respect to such repairing, cleaning, altering, or improving. [2009 c 503 § 2; 2003 c 5 § 3; 1998 c 311 § 7; 1995 c 63 § 2; 1980 c 37 § 54. Formerly RCW 82.12.030(4).]

Finding—Intent—Retroactive application—Effective date—2003 c 5: See notes following RCW 82.12.010.

Effective date—1995 c 63: See note following RCW 82.08.0263.

Intent—1980 c 37: See note following RCW 82.04.4281.

82.12.0255 Exemptions—Nontaxable tangible personal property, warranties, and digital products. The provisions of this chapter do not apply in respect to the use of any article of tangible personal property, extended warranty, digital good, digital code, digital automated service, or other service which the state is prohibited from taxing under the Constitution of the state or under the Constitution or laws of the United States. [2009 c 535 § 610; 2005 c 514 § 107; 2003 c 5 § 4; 1980 c 37 § 55. Formerly RCW 82.12.030(5).]

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Effective date—2005 c 514: See note following RCW 83.100.230.

Part headings not law—Severability—2005 c 514: See notes following RCW 82.12.808.

Finding—Intent—Retroactive application—Effective date—2003 c 5: See notes following RCW 82.12.010.

Intent—1980 c 37: See note following RCW 82.04.4281.

82.12.0257 Exemptions—Use of personal property of the operating property of a public utility by state or political subdivision. The provisions of this chapter do not apply in respect to the use of any article of personal property included within the transfer of the title to the entire operating property of a publicly or privately owned public utility, or of a complete operating integral section thereof, by the state or a political subdivision thereof in conducting any business defined in *RCW 82.16.010 (1), (2), (3), (4), (5), (6), (7), (8), (9), (10), or (11). For the purposes of this section, "operating property" includes digital goods and digital codes. [2009 c 535 § 611; 1980 c 37 § 57. Formerly RCW 82.12.030(7).]

***Reviser's note:** RCW 82.16.010 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsections (1), (2), (3), (4), (5), (6), (7), (8), (9), and (10) to subsections (8), (1), (9), (13), (4), (10), (2), (6), (12), and (7), respectively.

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Intent—1980 c 37: See note following RCW 82.04.4281.

82.12.0258 Exemptions—Use of personal property previously used in farming and purchased from farmer at auction. The provisions of this chapter do not apply in respect to the use of personal property (including household goods) that has been used in conducting a farm activity, if such property was purchased from a farmer at an auction sale held or conducted by an auctioneer upon a farm and not otherwise. [2009 c 535 § 612; 1980 c 37 § 58. Formerly RCW 82.12.030(8).]

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Intent—1980 c 37: See note following RCW 82.04.4281.

82.12.0259 Exemptions—Use of personal property, digital automated services, or certain other services by

federal corporations providing aid and relief. The provisions of this chapter do not apply in respect to the use of personal property or the use of digital automated services or services defined in RCW 82.04.050 (2)(a) or (6)(b) by corporations that have been incorporated under any act of the congress of the United States and whose principal purposes are to furnish volunteer aid to members of the armed forces of the United States and also to carry on a system of national and international relief and to apply the same in mitigating the sufferings caused by pestilence, famine, fire, flood, and other national calamities and to devise and carry on measures for preventing the same. [2009 c 535 § 613; 2003 c 5 § 7; 1980 c 37 § 59. Formerly RCW 82.12.030(9).]

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Finding—Intent—Retroactive application—Effective date—2003 c 5: See notes following RCW 82.12.010.

Intent—1980 c 37: See note following RCW 82.04.4281.

82.12.02595 Exemptions—Personal property and certain services donated to nonprofit organization or governmental entity. (1) This chapter does not apply to the use by a nonprofit charitable organization or state or local governmental entity of personal property that has been donated to the nonprofit charitable organization or state or local governmental entity, or to the subsequent use of the property by a person to whom the property is donated or bailed in furtherance of the purpose for which the property was originally donated.

(2) This chapter does not apply to the donation of personal property without intervening use to a nonprofit charitable organization, or to the incorporation of tangible personal property without intervening use into real or personal property of or for a nonprofit charitable organization in the course of installing, repairing, cleaning, altering, imprinting, improving, constructing, or decorating the real or personal property for no charge.

(3) This chapter does not apply to the use by a nonprofit charitable organization of labor and services rendered in respect to installing, repairing, cleaning, altering, imprinting, or improving personal property provided to the charitable organization at no charge, or to the donation of such services.

(4) This chapter does not apply to the donation of amusement and recreation services without intervening use to a nonprofit organization or state or local governmental entity, to the use by a nonprofit organization or state or local governmental entity of amusement and recreation services, or to the subsequent use of the services by a person to whom the services are donated or bailed in furtherance of the purpose for which the services were originally donated. As used in this subsection, "amusement and recreation services" has the meaning in RCW 82.04.050(3)(a). [2009 c 535 § 615; 2004 c 155 § 1; 2003 c 5 § 11; 1998 c 182 § 1; 1995 c 201 § 1.]

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Effective date—2004 c 155: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 26, 2004]." [2004 c 155 § 2.]

Finding—Intent—Retroactive application—Effective date—2003 c 5: See notes following RCW 82.12.010.

Effective date—1995 c 201: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 1, 1995]." [1995 c 201 § 2.]

82.12.0272 Exemptions—Use of personal property in single trade shows. The provisions of this chapter do not apply in respect to the use of personal property held for sale and displayed in single trade shows for a period not in excess of thirty days, the primary purpose of which is to promote the sale of products or services. [2009 c 535 § 616; 1980 c 37 § 70. Formerly RCW 82.12.030(20).]

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Intent—1980 c 37: See note following RCW 82.04.4281.

82.12.0284 Exemptions—Use of computers or computer components, accessories, software, digital goods, or digital codes donated to schools or colleges. The provisions of this chapter do not apply in respect to the use of computers, computer components, computer accessories, computer software, digital goods, or digital codes, irrevocably donated to any public or private nonprofit school or college, as defined under chapter 84.36 RCW, in this state. For purposes of this section, "computer" and "computer software" have the same meaning as in RCW 82.04.215. [2009 c 535 § 617; 2007 c 54 § 15; 2003 c 168 § 603; 1983 1st ex.s. c 55 § 7.]

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Severability—2007 c 54: See note following RCW 82.04.050.

Effective dates—Part headings not law—2003 c 168: See notes following RCW 82.08.010.

Effective dates—1983 1st ex.s. c 55: See note following RCW 82.08.010.

82.12.0293 Exemptions—Use of food and food ingredients. (1) The provisions of this chapter shall not apply in respect to the use of food and food ingredients for human consumption. "Food and food ingredients" has the same meaning as in RCW 82.08.0293.

(2) The exemption of "food and food ingredients" provided for in subsection (1) of this section shall not apply to prepared food, soft drinks, or dietary supplements. "Prepared food," "soft drinks," and "dietary supplements" have the same meanings as in RCW 82.08.0293.

(3) Notwithstanding anything in this section to the contrary, the exemption of "food and food ingredients" provided in this section shall apply to food and food ingredients which are furnished, prepared, or served as meals:

(a) Under a state administered nutrition program for the aged as provided for in the older americans act (P.L. 95-478 Title III) and RCW 74.38.040(6);

(b) Which are provided to senior citizens, individuals with disabilities, or low-income persons by a not-for-profit organization organized under chapter 24.03 or 24.12 RCW; or

(c) That are provided to residents, sixty-two years of age or older, of a qualified low-income senior housing facility by the lessor or operator of the facility. The sale of a meal that is billed to both spouses of a marital community or both domestic partners of a domestic partnership meets the age

requirement in this subsection (3)(c) if at least one of the spouses or domestic partners is at least sixty-two years of age. For purposes of this subsection, "qualified low-income senior housing facility" has the same meaning as in RCW 82.08.0293. [2009 c 483 § 4; 2003 c 168 § 303; 1988 c 103 § 2; 1986 c 182 § 2; 1985 c 104 § 2; 1982 1st ex.s. c 35 § 34.]

Finding—Intent—Effective date—2009 c 483: See notes following RCW 82.08.0293.

Effective dates—Part headings not law—2003 c 168: See notes following RCW 82.08.010.

Effective date—1988 c 103: See note following RCW 82.08.0293.

Severability—Effective dates—1982 1st ex.s. c 35: See notes following RCW 82.08.020.

82.12.0315 Exemptions—Rental or sales related to motion picture or video productions—Exceptions. (1) The provisions of this chapter shall not apply in respect to the use of:

(a) Production equipment rented to a motion picture or video production business;

(b) Production equipment acquired and used by a motion picture or video production business in another state, if the acquisition and use occurred more than ninety days before the time the motion picture or video production business entered this state; and

(c) Production services that are within the scope of RCW 82.04.050(2) (a) or (g) and are sold to a motion picture or video production business.

(2) As used in this section, "production equipment," "production services," and "motion picture or video production business" have the meanings given in RCW 82.08.0315.

(3) The exemption provided for in this section shall not apply to the use of production equipment rented to, or production equipment or production services that are within the scope of RCW 82.04.050(2) (a) or (g) acquired and used by, a motion picture or video production business that is engaged, to any degree, in the production of erotic material, as defined in RCW 9.68.050. [2009 c 535 § 614; 2003 c 5 § 10; 1995 2nd sp.s. c 5 § 2.]

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Finding—Intent—Retroactive application—Effective date—2003 c 5: See notes following RCW 82.12.010.

Effective date—1995 2nd sp.s. c 5: See note following RCW 82.08.0315.

82.12.0345 Exemptions—Use of newspapers. The tax imposed by RCW 82.12.020 does not apply in respect to the use of:

(1) Printed newspapers as defined in RCW 82.08.0253; and

(2) Newspapers transferred electronically, provided that the electronic version of a printed newspaper:

(a) Shares content with the printed newspaper; and

(b) Is prominently identified by the same name as the printed newspaper or otherwise conspicuously indicates that it is a complement to the printed newspaper. [2009 c 535 § 618; 1994 c 124 § 11.]

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

82.12.0347 Exemptions—Use of academic transcripts. The provisions of this chapter do not apply in respect to the use of academic transcripts, including academic transcripts transferred electronically. [2009 c 535 § 619; 1996 c 272 § 3.]

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Effective date—1996 c 272: See note following RCW 82.04.399.

82.12.035 Credit for retail sales or use taxes paid to other jurisdictions with respect to property used. A credit is allowed against the taxes imposed by this chapter upon the use in this state of tangible personal property, extended warranty, digital good, digital code, digital automated service, or services defined as a retail sale in RCW 82.04.050 (2) (a) or (g), (3)(a), or (6)(b), in the amount that the present user thereof or his or her bailor or donor has paid a legally imposed retail sales or use tax with respect to such property, extended warranty, digital good, digital code, digital automated service, or service defined as a retail sale in RCW 82.04.050 (2) (a) or (g), (3)(a), or (6)(b) to any other state, possession, territory, or commonwealth of the United States, any political subdivision thereof, the District of Columbia, and any foreign country or political subdivision thereof. [2009 c 535 § 1107; 2007 c 6 § 1203; 2005 c 514 § 108; 2002 c 367 § 5; 1996 c 148 § 6; 1987 c 27 § 2; 1967 ex.s. c 89 § 5.]

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Part headings not law—Savings—Effective date—Severability—2007 c 6: See notes following RCW 82.32.020.

Findings—Intent—2007 c 6: See note following RCW 82.14.495.

Effective date—2005 c 514: See note following RCW 83.100.230.

Part headings not law—Severability—2005 c 514: See notes following RCW 82.12.808.

Severability—Effective date—2002 c 367: See notes following RCW 82.04.060.

Severability—Effective date—1996 c 148: See notes following RCW 82.04.050.

82.12.040 Retailers to collect tax—Penalty—Contingent expiration of subsection. (1) Every person who maintains in this state a place of business or a stock of goods, or engages in business activities within this state, shall obtain from the department a certificate of registration, and shall, at the time of making sales of tangible personal property, digital goods, digital codes, digital automated services, extended warranties, or sales of any service defined as a retail sale in RCW 82.04.050 (2) (a) or (g), (3)(a), or (6)(b), or making transfers of either possession or title, or both, of tangible personal property for use in this state, collect from the purchasers or transferees the tax imposed under this chapter. The tax to be collected under this section must be in an amount equal to the purchase price multiplied by the rate in effect for the retail sales tax under RCW 82.08.020. For the purposes of this chapter, the phrase "maintains in this state a place of business" shall include the solicitation of sales and/or taking of orders by sales agents or traveling representatives. For the purposes of this chapter, "engages in business activity within this state" includes every activity which is sufficient under the Constitution of the United States for this state to require collection of tax under this chapter. The department must in

rules specify activities which constitute engaging in business activity within this state, and must keep the rules current with future court interpretations of the Constitution of the United States.

(2) Every person who engages in this state in the business of acting as an independent selling agent for persons who do not hold a valid certificate of registration, and who receives compensation by reason of sales of tangible personal property, digital goods, digital codes, digital automated services, extended warranties, or sales of any service defined as a retail sale in RCW 82.04.050 (2) (a) or (g), (3)(a), or (6)(b), of his or her principals for use in this state, must, at the time such sales are made, collect from the purchasers the tax imposed on the purchase price under this chapter, and for that purpose shall be deemed a retailer as defined in this chapter.

(3) The tax required to be collected by this chapter is deemed to be held in trust by the retailer until paid to the department, and any retailer who appropriates or converts the tax collected to the retailer's own use or to any use other than the payment of the tax provided herein to the extent that the money required to be collected is not available for payment on the due date as prescribed is guilty of a misdemeanor. In case any seller fails to collect the tax herein imposed or having collected the tax, fails to pay the same to the department in the manner prescribed, whether such failure is the result of the seller's own acts or the result of acts or conditions beyond the seller's control, the seller is nevertheless personally liable to the state for the amount of such tax, unless the seller has taken from the buyer in good faith a copy of a direct pay permit issued under RCW 82.32.087.

(4) Any retailer who refunds, remits, or rebates to a purchaser, or transferee, either directly or indirectly, and by whatever means, all or any part of the tax levied by this chapter is guilty of a misdemeanor.

(5) Notwithstanding subsections (1) through (4) of this section, any person making sales is not obligated to collect the tax imposed by this chapter if:

(a) The person's activities in this state, whether conducted directly or through another person, are limited to:

(i) The storage, dissemination, or display of advertising;

(ii) The taking of orders; or

(iii) The processing of payments; and

(b) The activities are conducted electronically via a web site on a server or other computer equipment located in Washington that is not owned or operated by the person making sales into this state nor owned or operated by an affiliated person. "Affiliated persons" has the same meaning as provided in RCW 82.04.424.

(6) Subsection (5) of this section expires when: (a) The United States congress grants individual states the authority to impose sales and use tax collection duties on remote sellers; or (b) it is determined by a court of competent jurisdiction, in a judgment not subject to review, that a state can impose sales and use tax collection duties on remote sellers. [2009 c 535 § 1108; 2005 c 514 § 109. Prior: 2003 c 168 § 215; 2003 c 76 § 4; 2001 c 188 § 5; 1986 c 48 § 1; 1971 ex.s. c 299 § 11; 1961 c 293 § 11; 1961 c 15 § 82.12.040; prior: 1955 c 389 § 27; 1945 c 249 § 7; 1941 c 178 § 10; 1939 c 225 § 16; Rem. Supp. 1945 § 8370-33; prior: 1935 c 180 § 33.]

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Effective date—2005 c 514: See note following RCW 83.100.230.

Part headings not law—Severability—2005 c 514: See notes following RCW 82.12.808.

Effective dates—Part headings not law—2003 c 168: See notes following RCW 82.08.010.

Intent—2003 c 76: See note following RCW 82.04.424.

Finding—Intent—Effective date—2001 c 188: See notes following RCW 82.32.087.

Effective date—1986 c 48: "This act shall take effect July 1, 1986." [1986 c 48 § 2.]

Effective dates—Severability—1971 ex.s. c 299: See notes following RCW 82.04.050.

Project on exemption reporting requirements: RCW 82.32.440.

82.12.195 Bundled transactions—Tax imposed. (1) Except as provided in subsection (5) of this section, the use of each product acquired in a bundled transaction is subject to the tax imposed by RCW 82.12.020 if the use of any of its component products is subject to the tax imposed by RCW 82.12.020.

(2) The use of each product acquired in a transaction described in RCW 82.08.190(4) (a) or (b) is subject to the tax imposed by RCW 82.12.020 if the service that is the true object of the transaction is subject to the tax imposed by RCW 82.12.020. If the service that is the true object of the transaction is not subject to the tax imposed by RCW 82.12.020, the use of each product acquired in the transaction is not subject to the tax imposed by RCW 82.12.020.

(3) The use of each product acquired in a transaction described in RCW 82.08.190(4)(c) is not subject to the tax imposed by RCW 82.12.020.

(4) The use of each product in a transaction described in RCW 82.08.190(4)(d) is not subject to the tax imposed by RCW 82.12.020.

(5) The tax imposed by RCW 82.12.020 does not apply in respect to the use of each product acquired in a bundled transaction consisting entirely of the sale of services or of services and prepared food, if the products are provided to a resident, sixty-two years of age or older, of a qualified low-income senior housing facility by the lessor or operator of the facility. A single bundled transaction involving both spouses of a marital community or both domestic partners of a domestic partnership meets the age requirement in this subsection if at least one of the spouses or domestic partners is at least sixty-two years of age. For purposes of this subsection, "qualified low-income senior housing facility" has the same meaning as in RCW 82.08.0293.

(6) The definitions in RCW 82.08.190 apply to this section. [2009 c 483 § 5; 2007 c 6 § 1403.]

Finding—Intent—Effective date—2009 c 483: See notes following RCW 82.08.0293.

Part headings not law—Savings—Effective date—Severability—2007 c 6: See notes following RCW 82.32.020.

Findings—Intent—2007 c 6: See note following RCW 82.14.495.

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

82.12.805 Exemptions—Personal property used at an aluminum smelter. (1) A person who is subject to tax under RCW 82.12.020 for personal property used at an alu-

minum smelter, or for tangible personal property that will be incorporated as an ingredient or component of buildings or other structures at an aluminum smelter, or for labor and services rendered with respect to such buildings, structures, or personal property, is eligible for an exemption from the state share of the tax in the form of a credit, as provided in this section. The amount of the credit shall be equal to the state share of use tax computed to be due under RCW 82.12.020. The person shall submit information, in a form and manner prescribed by the department, specifying the amount of qualifying purchases or acquisitions for which the exemption is claimed and the amount of exempted tax.

(2) For the purposes of this section, "aluminum smelter" has the same meaning as provided in RCW 82.04.217.

(3) Credits may not be claimed under this section for taxable events occurring on or after January 1, 2012. [2009 c 535 § 620; 2006 c 182 § 4; 2004 c 24 § 11.]

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Intent—Effective date—2004 c 24: See notes following RCW 82.04.2909.

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

82.12.816 Exemptions—Electric vehicle batteries and infrastructure. ***(Expires January 1, 2020.)*** (1) The tax imposed by RCW 82.12.020 does not apply to the use of:

(a) Electric vehicle batteries;

(b) Labor and services rendered in respect to installing, repairing, altering, or improving electric vehicle batteries; and

(c) Tangible personal property that will become a component of electric vehicle infrastructure during the course of installing, constructing, repairing, or improving electric vehicle infrastructure.

(2) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Battery charging station" means an electrical component assembly or cluster of component assemblies designed specifically to charge batteries within electric vehicles, which meet or exceed any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

(b) "Battery exchange station" means a fully automated facility that will enable an electric vehicle with a swappable battery to enter a drive lane and exchange the depleted battery with a fully charged battery through a fully automated process, which meets or exceeds any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

(c) "Electric vehicle infrastructure" means structures, machinery, and equipment necessary and integral to support an electric vehicle, including battery charging stations, rapid charging stations, and battery exchange stations.

(d) "Rapid charging station" means an industrial grade electrical outlet that allows for faster recharging of electric vehicle batteries through higher power levels, which meets or exceeds any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

(3) This section expires January 1, 2020. [2009 c 459 § 5.]

Finding—Purpose—2009 c 459: See note following RCW 47.80.090.

Regional transportation planning organizations—Electric vehicle infrastructure: RCW 47.80.090.

82.12.860 Exemptions—Property and services acquired from a federal credit union. (1) This chapter does not apply to state credit unions with respect to the use of any article of tangible personal property, digital good, digital code, digital automated service, service defined as a retail sale in RCW 82.04.050 (2) (a) or (g), (3)(a), or (6)(b), or extended warranty, acquired from a federal credit union, foreign credit union, or out-of-state credit union as a result of a merger or conversion.

(2) For purposes of this section, the following definitions apply:

(a) "Federal credit union" means a credit union organized and operating under the laws of the United States.

(b) "Foreign credit union" means a credit union organized and operating under the laws of another country or other foreign jurisdiction.

(c) "Out-of-state credit union" means a credit union organized and operating under the laws of another state or United States territory or possession.

(d) "State credit union" means a credit union organized and operating under the laws of this state. [2009 c 535 § 621; 2006 c 11 § 1.]

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

82.12.890 Exemptions—Livestock nutrient management equipment and facilities. (1) The provisions of this chapter do not apply with respect to the use by an eligible person of:

(a) Qualifying livestock nutrient management equipment;

(b) Labor and services rendered in respect to installing, repairing, cleaning, altering, or improving qualifying livestock nutrient management equipment; and

(c)(i) Tangible personal property that becomes an ingredient or component of qualifying livestock nutrient management facilities in the course of repairing, cleaning, altering, or improving of such facilities.

(ii) The exemption provided in this subsection (1)(c) does not apply to the use of tangible personal property that becomes an ingredient or component of qualifying livestock nutrient management facilities during the course of constructing new, or replacing previously existing, qualifying livestock nutrient management facilities.

(2)(a) To be eligible, the equipment and facilities must be used exclusively for activities necessary to maintain a livestock nutrient management plan.

(b) The exemption applies to the use of tangible personal property and labor and services made after the livestock nutrient management plan is: (i) Certified under chapter 90.64 RCW; (ii) approved as part of the permit issued under chapter 90.48 RCW; or (iii) approved as required under RCW 82.08.890(4)(c)(iii).

(3) The exemption certificate and recordkeeping requirements of RCW 82.08.890 apply to this section. The defini-

tions in RCW 82.08.890 apply to this section. [2009 c 469 § 602; 2006 c 151 § 3; 2003 c 5 § 15; 2001 2nd sp.s. c 18 § 3.]

Effective date—2009 c 469: See note following RCW 82.08.962.

Effective date—Conservation commission—Report to legislature—2006 c 151: See notes following RCW 82.08.890.

Finding—Intent—Retroactive application—Effective date—2003 c 5: See notes following RCW 82.12.010.

Intent—Effective date—2001 2nd sp.s. c 18: See notes following RCW 82.08.890.

82.12.956 Exemptions—Hog fuel used to generate electricity, steam, heat, or biofuel. ***(Expires June 30, 2013.)*** (1) The provisions of this chapter do not apply with respect to the use of hog fuel for production of electricity, steam, heat, or biofuel.

(2) For the purposes of this section:

(a) "Hog fuel" has the same meaning as provided in RCW 82.08.956; and

(b) "Biofuel" has the same meaning as provided in RCW 43.325.010.

(3) This section expires June 30, 2013. [2009 c 469 § 302.]

Effective date—2009 c 469: See note following RCW 82.08.962.

82.12.957 Exemptions—Forest derived biomass. *(*Expires June 30, 2013.) (1) The provisions of this chapter do not apply with respect to the use of forest derived biomass for production of electricity, steam, heat, or biofuel.

(2) For purposes of this section, "biofuel" is defined in RCW 43.325.010.

(3) This section expires June 30, 2013. [2009 c 469 § 403.]

Effective date—2009 c 469: See note following RCW 82.08.962.

82.12.962 Exemptions—Use of machinery and equipment in generating electricity. *(*Expires June 30, 2013.) (1)(a) Except as provided in RCW 82.12.963, consumers who have paid the tax imposed by RCW 82.12.020 on machinery and equipment used directly in generating electricity using fuel cells, wind, sun, biomass energy, tidal or wave energy, geothermal resources, anaerobic digestion, technology that converts otherwise lost energy from exhaust, or landfill gas as the principal source of power, or to sales of or charges made for labor and services rendered in respect to installing such machinery and equipment, are eligible for an exemption as provided in this section, but only if the purchaser develops with such machinery, equipment, and labor a facility capable of generating not less than one thousand watts of electricity.

(b) Beginning on July 1, 2009, through June 30, 2011, the provisions of this chapter do not apply in respect to the use of machinery and equipment described in (a) of this subsection that are used directly in generating electricity or to sales of or charges made for labor and services rendered in respect to installing such machinery and equipment.

(c) Beginning on July 1, 2011, through June 30, 2013, the amount of the exemption under this subsection (1) is equal to seventy-five percent of the state and local sales tax paid. The consumer is eligible for an exemption under this subsection (1)(c) in the form of a remittance.

(2)(a) A person claiming an exemption in the form of a remittance under subsection (1)(c) of this section must pay the tax imposed by RCW 82.12.020 and all applicable local use taxes imposed under the authority of chapters 82.14 and 81.104 RCW. The consumer may then apply to the department for remittance in a form and manner prescribed by the department. A consumer may not apply for a remittance under this section more frequently than once per quarter. The consumer must specify the amount of exempted tax claimed and the qualifying purchases or acquisitions for which the exemption is claimed. The consumer must retain, in adequate detail, records to enable the department to determine whether the consumer is entitled to an exemption under this section, including: Invoices; proof of tax paid; and documents describing the machinery and equipment.

(b) The department must determine eligibility under this section based on the information provided by the consumer, which is subject to audit verification by the department. The department must on a quarterly basis remit exempted amounts to qualifying consumers who submitted applications during the previous quarter.

(3) Purchases exempt under RCW 82.08.962 are also exempt from the tax imposed under RCW 82.12.020.

(4) The definitions in RCW 82.08.962 apply to this section.

(5) This section expires June 30, 2013. [2009 c 469 § 102.]

Effective date—2009 c 469: See note following RCW 82.08.962.

82.12.963 Exemptions—Use of machinery and equipment using solar energy to generate electricity. ***(Expires June 30, 2013.)*** (1) The provisions of this chapter do not apply with respect to machinery and equipment used directly in generating not more than ten kilowatts of electricity using solar energy, or to the use of labor and services rendered in respect to installing such machinery and equipment.

(2) The definitions in RCW 82.08.963 apply to this section.

(3) This section expires June 30, 2013. [2009 c 469 § 104.]

Effective date—2009 c 469: See note following RCW 82.08.962.

82.12.964 Use of machinery and equipment used in generating electricity—Effect of exemption expiration. (1) Except as provided in subsection (2) of this section, the expiration of RCW 82.12.02567 and 82.12.962 do not require the payment of, or authorize the department to assess, use tax imposed by or under the authority of RCW 82.12.020, 81.104.170, and chapter 82.14 RCW, on the use of machinery and equipment, and labor and services rendered in respect to installing such machinery and equipment, if such use qualified for the exemption under RCW 82.12.02567 or 82.12.962 immediately preceding the expiration date of the applicable exemption under RCW 82.12.02567 or 82.12.962.

(2) Subsection (1) of this section does not prohibit the department from assessing, subject to the limitations period in RCW 82.32.050, state and local use taxes on the use of machinery and equipment, and labor and services rendered in respect to installing such machinery and equipment, if, before the expiration of the applicable exemption provided in RCW 82.12.02567 or 82.12.962, the machinery and equipment was put to a use that is outside of the scope of the applicable

exemption in RCW 82.12.02567 or 82.12.962. [2009 c 469 § 109.]

Effective date—2009 c 469: See note following RCW 82.08.962.

82.12.9651 Exemptions—Gases and chemicals used in production of semiconductor materials. ***(Expires December 1, 2018.)*** (1) The provisions of this chapter do not apply with respect to the use of gases and chemicals used by a manufacturer or processor for hire in the production of semiconductor materials. This exemption is limited to gases and chemicals used in the production process to grow the product, deposit or grow permanent or sacrificial layers on the product, to etch or remove material from the product, to anneal the product, to immerse the product, to clean the product, and other such uses whereby the gases and chemicals come into direct contact with the product during the production process, or uses of gases and chemicals to clean the chambers and other like equipment in which such processing takes place. For purposes of this section, "semiconductor materials" has the meaning provided in RCW 82.04.2404 and 82.04.294(3).

(2) A person taking the exemption under this section must report under RCW 82.32.5351. No application is necessary for the tax exemption. The person is subject to all of the requirements of chapter 82.32 RCW.

(3) This section expires twelve years after December 1, 2006. [2009 c 469 § 503; 2006 c 84 § 4.]

Effective date—2009 c 469: See note following RCW 82.08.962.

Effective date—2006 c 84 §§ 2-8: See note following RCW 82.04.2404.

Findings—Intent—2006 c 84: See note following RCW 82.04.2404.

82.12.995 Exemptions—Certain limited purpose public corporations, commissions, and authorities. (1) The provisions of this chapter do not apply with respect to the use of personal property and services provided by a public corporation, commission, or authority created under RCW 35.21.660 or 35.21.730 to an eligible entity.

(2) For purposes of this section, "eligible entity" means a limited liability company, a limited partnership, or a single asset entity, described in RCW 82.04.615. [2009 c 535 § 622; 2007 c 381 § 3.]

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Chapter 82.14 RCW
LOCAL RETAIL SALES AND USE TAXES

Sections

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82.14.048 Sales and use taxes for public facilities districts. (1) The governing board of a public facilities district under chapter 36.100 or 35.57 RCW may submit an authorizing proposition to the voters of the district, and if the proposition is approved by a majority of persons voting, impose a sales and use tax in accordance with the terms of this chapter.

(2) The tax authorized in this section shall be in addition to any other taxes authorized by law and shall be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the public facilities district. The rate of tax shall not exceed two-tenths of one percent of the selling price in the case of a sales tax, or value of the article used, in the case of a use tax. A public facilities district formed under RCW 35.57.010(1)(e) may not impose the tax authorized under this subsection at a rate that exceeds two-tenths of one percent minus the rate of the highest tax authorized by this subsection that is imposed by any other public facilities district within its boundaries. If a public facilities district formed under RCW 35.57.010(1)(e) has imposed a tax under this subsection and issued or incurred obligations pledging that tax, so long as those obligations are outstanding no other public facilities district within its boundaries may thereafter impose a tax under this subsection at a rate that would reduce the rate of the tax that was pledged to the repayment of those obligations. A public facilities district that imposes a tax under this subsection is responsible for the payment of any costs incurred for the purpose of administering the provisions of this subsection, RCW 35.57.010(1)(e), and 35.57.020(1)(b), including any administrative costs associated with the imposition of a tax under this subsection incurred by either the department of revenue or local government, or both.

(3) Moneys received from any tax imposed under the authority of this section shall be used for the purpose of providing funds for the costs associated with the financing, design, acquisition, construction, equipping, operating, maintaining, remodeling, repairing, and reequipping of its public facilities. [2009 c 533 § 3; 2008 c 86 § 103; 1999 c 165 § 12; 1995 c 396 § 6; 1991 c 207 § 1.]

Severability—Savings—Part headings not law—2008 c 86: See notes following RCW 82.14.030.

Severability—1999 c 164: See RCW 35.57.900.

Severability—1995 c 396: See note following RCW 36.100.010.

82.14.050 Administration and collection—Local sales and use tax account. (1) The counties, cities, and transportation authorities under RCW 82.14.045, public facilities districts under chapters 36.100 and 35.57 RCW, public transportation benefit areas under RCW 82.14.440, regional transportation investment districts, and transportation benefit districts under chapter 36.73 RCW shall contract,

prior to the effective date of a resolution or ordinance imposing a sales and use tax, the administration and collection to the state department of revenue, which shall deduct a percentage amount, as provided by contract, not to exceed two percent of the taxes collected for administration and collection expenses incurred by the department. The remainder of any portion of any tax authorized by this chapter that is collected by the department of revenue shall be deposited by the state department of revenue in the local sales and use tax account hereby created in the state treasury. Moneys in the local sales and use tax account may be withdrawn only for:

(a) Distribution to counties, cities, transportation authorities, public facilities districts, public transportation benefit areas, regional transportation investment districts, and transportation benefit districts imposing a sales and use tax; and

(b) Making refunds of taxes imposed under the authority of this chapter and RCW 81.104.170 and exempted under RCW 82.08.962 and 82.12.962.

(2) All administrative provisions in chapters 82.03, 82.08, 82.12, and 82.32 RCW, as they now exist or may hereafter be amended, shall, insofar as they are applicable to state sales and use taxes, be applicable to taxes imposed pursuant to this chapter.

(3) Counties, cities, transportation authorities, public facilities districts, and regional transportation investment districts may not conduct independent sales or use tax audits of sellers registered under the streamlined sales tax agreement.

(4) Except as provided in RCW 43.08.190, all earnings of investments of balances in the local sales and use tax account shall be credited to the local sales and use tax account and distributed to the counties, cities, transportation authorities, public facilities districts, public transportation benefit areas, regional transportation investment districts, and transportation benefit districts monthly. [2009 c 469 § 107; 2005 c 336 § 20. Prior: 2003 c 168 § 201; 2003 c 83 § 208; 2002 c 56 § 406; 1999 c 165 § 14; 1991 sp.s. c 13 § 34; 1991 c 207 § 2; 1990 2nd ex.s. c 1 § 201; 1985 c 57 § 81; 1981 2nd ex.s. c 4 § 10; 1971 ex.s. c 296 § 3; 1970 ex.s. c 94 § 6.]

Effective date—2009 c 469: See note following RCW 82.08.962.

Effective date—2005 c 336: See note following RCW 36.73.015.

Effective dates—Part headings not law—2003 c 168: See notes following RCW 82.08.010.

Findings—Intent—Captions, part headings not law—Severability—Effective date—2003 c 83: See notes following RCW 36.57A.200.

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

Severability—1999 c 164: See RCW 35.57.900.

Effective dates—Severability—1991 sp.s. c 13: See notes following RCW 18.08.240.

Applicability—1990 2nd ex.s. c 1 §§ 201-204: "Sections 201 through 204 of this act shall not be effective for earnings on balances prior to July 1, 1990, regardless of when a distribution is made." [1990 2nd ex.s. c 1 § 205.]

Severability—1990 2nd ex.s. c 1: See note following RCW 82.14.300.

Effective date—1985 c 57: See note following RCW 18.04.105.

Severability—1981 2nd ex.s. c 4: See note following RCW 43.30.325.

Legislative finding, declaration—Severability—1971 ex.s. c 296: See notes following RCW 82.14.045.

82.14.060 Distributions to counties, cities, transportation authorities, public facilities districts, and transportation benefit districts—Imposition at excess rates, effect. (1)(a) Monthly, the state treasurer must distribute from the local sales and use tax account to the counties, cities, transportation authorities, public facilities districts, and transportation benefit districts the amount of tax collected on behalf of each taxing authority, less:

(i) The deduction provided for in RCW 82.14.050; and

(ii) The amount of any refunds of local sales and use taxes exempted under RCW 82.08.962 and 82.12.962, which must be made without appropriation.

(b) The state treasurer shall make the distribution under this section without appropriation.

(2) In the event that any ordinance or resolution imposes a sales and use tax at a rate in excess of the applicable limits contained herein, such ordinance or resolution shall not be considered void in toto, but only with respect to that portion of the rate which is in excess of the applicable limits contained herein. [2009 c 469 § 108; 2005 c 336 § 21; 1991 c 207 § 3; 1990 2nd ex.s. c 1 § 202; 1981 2nd ex.s. c 4 § 11; 1971 ex.s. c 296 § 4; 1970 ex.s. c 94 § 7.]

Effective date—2009 c 469: See note following RCW 82.08.962.

Effective date—2005 c 336: See note following RCW 36.73.015.

Applicability—1990 2nd ex.s. c 1: See note following RCW 82.14.050.

Severability—1990 2nd ex.s. c 1: See note following RCW 82.14.300.

Severability—1981 2nd ex.s. c 4: See note following RCW 43.30.325.

Legislative finding, declaration—Severability—1971 ex.s. c 296: See notes following RCW 82.14.045.

82.14.370 Sales and use tax for public facilities in rural counties. (1) The legislative authority of a rural county may impose a sales and use tax in accordance with the terms of this chapter. The tax is in addition to other taxes authorized by law and shall be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the county. The rate of tax shall not exceed 0.09 percent of the selling price in the case of a sales tax or value of the article used in the case of a use tax, except that for rural counties with population densities between sixty and one hundred persons per square mile, the rate shall not exceed 0.04 percent before January 1, 2000.

(2) The tax imposed under subsection (1) of this section shall be deducted from the amount of tax otherwise required to be collected or paid over to the department of revenue under chapter 82.08 or 82.12 RCW. The department of revenue shall perform the collection of such taxes on behalf of the county at no cost to the county.

(3)(a) Moneys collected under this section shall only be used to finance public facilities serving economic development purposes in rural counties and finance personnel in economic development offices. The public facility must be listed as an item in the officially adopted county overall economic development plan, or the economic development section of the county's comprehensive plan, or the comprehensive plan of a city or town located within the county for those counties planning under RCW 36.70A.040. For those counties that do not have an adopted overall economic development plan and do not plan under the growth management act,

the public facility must be listed in the county's capital facilities plan or the capital facilities plan of a city or town located within the county.

(b) In implementing this section, the county shall consult with cities, towns, and port districts located within the county and the associate development organization serving the county to ensure that the expenditure meets the goals of chapter 130, Laws of 2004 and the requirements of (a) of this subsection. Each county collecting money under this section shall report, as follows, to the office of the state auditor, within one hundred fifty days after the close of each fiscal year: (i) A list of new projects begun during the fiscal year, showing that the county has used the funds for those projects consistent with the goals of chapter 130, Laws of 2004 and the requirements of (a) of this subsection; and (ii) expenditures during the fiscal year on projects begun in a previous year. Any projects financed prior to June 10, 2004, from the proceeds of obligations to which the tax imposed under subsection (1) of this section has been pledged shall not be deemed to be new projects under this subsection. No new projects funded with money collected under this section may be for justice system facilities.

(c) The definitions in this section apply throughout this section.

(i) "Public facilities" means bridges, roads, domestic and industrial water facilities, sanitary sewer facilities, earth stabilization, storm sewer facilities, railroad, electricity, natural gas, buildings, structures, telecommunications infrastructure, transportation infrastructure, or commercial infrastructure, and port facilities in the state of Washington.

(ii) "Economic development purposes" means those purposes which facilitate the creation or retention of businesses and jobs in a county.

(iii) "Economic development office" means an office of a county, port districts, or an associate development organization as defined in RCW 43.330.010, which promotes economic development purposes within the county.

(4) No tax may be collected under this section before July 1, 1998.

(a) Except as provided in (b) of this subsection, no tax may be collected under this section by a county more than twenty-five years after the date that a tax is first imposed under this section.

(b) For counties imposing the tax at the rate of 0.09 percent before August 1, 2009, the tax expires on the date that is twenty-five years after the date that the 0.09 percent tax rate was first imposed by that county.

(5) For purposes of this section, "rural county" means a county with a population density of less than one hundred persons per square mile or a county smaller than two hundred twenty-five square miles as determined by the office of financial management and published each year by the department for the period July 1st to June 30th. [2009 c 511 § 1. Prior: 2007 c 478 § 1; 2007 c 250 § 1; 2004 c 130 § 2; 2002 c 184 § 1; 1999 c 311 § 101; 1998 c 55 § 6; 1997 c 366 § 3.]

Effective date—2007 c 478: "This act takes effect August 1, 2007." [2007 c 478 § 2.]

Intent—2004 c 130: "It is the intent of the legislature in enacting this 2004 act to reaffirm the original goals of the 1997 act which first provided distressed counties with the local option sales and use tax contained in RCW 82.14.370. The local option tax is now available to all rural counties and the continuing legislative goal for RCW 82.14.370 is to promote the creation, attraction, expansion, and retention of businesses and provide for family wage jobs." [2004 c 130 § 1.]

Finding—Intent—1999 c 311: "The legislature finds that while Washington's economy is currently prospering, economic growth continues to be uneven, particularly as between metropolitan and rural areas. This has created in effect two Washingtons: One afflicted by inadequate infrastructure to support and attract investment, another suffering from congestion and soaring housing prices. In order to address these problems, the legislature intends to use resources strategically to build on our state's strengths while addressing threats to our prosperity." [1999 c 311 § 1.]

Part headings and subheadings not law—1999 c 311: "Part headings and subheadings used in this act are not any part of the law." [1999 c 311 § 601.]

Effective date—1999 c 311: "Sections 1, 101, 201, 301 through 305, 401, 402, 601, and 605 of this act take effect August 1, 1999." [1999 c 311 § 604.]

Severability—1999 c 311: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1999 c 311 § 606.]

Intent—1997 c 366: "The legislature recognizes the economic hardship that rural distressed areas throughout the state have undergone in recent years. Numerous rural distressed areas across the state have encountered serious economic downturns resulting in significant job loss and business failure. In 1991 the legislature enacted two major pieces of legislation to promote economic development and job creation, with particular emphasis on worker training, income, and emergency services support, along with community revitalization through planning services and infrastructure assistance. However even though these programs have been of assistance, rural distressed areas still face serious economic problems including: Above-average unemployment rates from job losses and below-average employment growth; low rate of business start-ups; and persistent erosion of vitally important resource-driven industries.

The legislature also recognizes that rural distressed areas in Washington have an abiding ability and consistent will to overcome these economic obstacles by building upon their historic foundations of business enterprise, local leadership, and outstanding work ethic.

The legislature intends to assist rural distressed areas in their ongoing efforts to address these difficult economic problems by providing a comprehensive and significant array of economic tools, necessary to harness the persistent and undaunted spirit of enterprise that resides in the citizens of rural distressed areas throughout the state.

The further intent of this act is to provide:

(1) A strategically designed plan of assistance, emphasizing state, local, and private sector leadership and partnership;

(2) A comprehensive and significant array of business assistance, services, and tax incentives that are accountable and performance driven;

(3) An array of community assistance including infrastructure development and business retention, attraction, and expansion programs that will provide a competitive advantage to rural distressed areas throughout Washington; and

(4) Regulatory relief to reduce and streamline zoning, permitting, and regulatory requirements in order to enhance the capability of businesses to grow and prosper in rural distressed areas." [1997 c 366 § 1.]

Goals—1997 c 366: "The primary goals of chapter 366, Laws of 1997 are to:

(1) Promote the ongoing operation of business in rural distressed areas;

(2) Promote the expansion of existing businesses in rural distressed areas;

(3) Attract new businesses to rural distressed areas;

(4) Assist in the development of new businesses from within rural distressed areas;

(5) Provide family wage jobs to the citizens of rural distressed areas; and

(6) Promote the development of communities of excellence in rural distressed areas." [1997 c 366 § 2.]

Severability—1997 c 366: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1997 c 366 § 11.]

Captions and part headings not law—1997 c 366: "Section captions and part headings used in this act are not any part of the law." [1997 c 366 § 12.]

82.14.415 Sales and use tax for cities to offset municipal service costs to newly annexed areas. (1) The legislative authority of any city that is located in a county with a population greater than six hundred thousand that annexes an area consistent with its comprehensive plan required by chapter 36.70A RCW, may impose a sales and use tax in accordance with the terms of this chapter. The tax is in addition to other taxes authorized by law and shall be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the city. The tax may only be imposed by a city if:

(a) The city has commenced annexation of an area having a population of at least ten thousand people, or four thousand in the case of a city described under subsection (3)(a)(i) of this section, prior to January 1, 2015; and

(b) The city legislative authority determines by resolution or ordinance that the projected cost to provide municipal services to the annexation area exceeds the projected general revenue that the city would otherwise receive from the annexation area on an annual basis.

(2) The tax authorized under this section is a credit against the state tax under chapter 82.08 or 82.12 RCW. The department of revenue shall perform the collection of such taxes on behalf of the city at no cost to the city and shall remit the tax to the city as provided in RCW 82.14.060.

(3)(a) Except as provided in (b) of this subsection, the maximum rate of tax any city may impose under this section is:

(i) 0.1 percent for each annexed area in which the population is greater than ten thousand and less than twenty thousand. The ten thousand population threshold in this subsection (3)(a)(i) is four thousand for a city with a population between one hundred fifteen thousand and one hundred forty thousand and located within a county with a population over one million five hundred thousand; and

(ii) 0.2 percent for an annexed area in which the population is greater than twenty thousand.

(b) Beginning July 1, 2011, the maximum rate of tax imposed under this section is 0.85 percent for an annexed area in which the population is greater than eighteen thousand if the annexed area was, prior to November 1, 2008, officially designated as a potential annexation area by more than one city, one of which has a population greater than four hundred thousand.

(4)(a) Except as provided in (b) of this subsection, the maximum cumulative rate of tax a city may impose under subsection (3)(a) of this section is 0.2 percent for the total number of annexed areas the city may annex.

(b) The maximum cumulative rate of tax a city may impose under subsection (3)(a) of this section is 0.3 percent, beginning July 1, 2011, if the city commenced annexation of an area, prior to January 1, 2010, that would have otherwise allowed the city to increase the rate of tax imposed under this section absent the rate limit imposed in (a) of this subsection.

(c) The maximum cumulative rate of tax a city may impose under subsection (3)(b) of this section is 0.85 percent for the single annexed area the city may annex and the amount of tax distributed to a city under subsection (3)(b) of this section shall not exceed five million dollars per fiscal year.

(5) The tax imposed by this section shall only be imposed at the beginning of a fiscal year and shall continue for no more than ten years from the date that each increment of the tax is first imposed. Tax rate increases due to additional annexed areas shall be effective on July 1st of the fiscal year following the fiscal year in which the annexation occurred, provided that notice is given to the department as set forth in subsection (9) of this section.

(6) All revenue collected under this section shall be used solely to provide, maintain, and operate municipal services for the annexation area.

(7) The revenues from the tax authorized in this section may not exceed that which the city deems necessary to generate revenue equal to the difference between the city's cost to provide, maintain, and operate municipal services for the annexation area and the general revenues that the cities would otherwise expect to receive from the annexation during a year. If the revenues from the tax authorized in this section and the revenues from the annexation area exceed the costs to the city to provide, maintain, and operate municipal services for the annexation area during a given year, the city shall notify the department and the tax distributions authorized in this section shall be suspended for the remainder of the year.

(8) No tax may be imposed under this section before July 1, 2007. Before imposing a tax under this section, the legislative authority of a city shall adopt an ordinance that includes the following:

(a) A certification that the amount needed to provide municipal services to the annexed area reflects the city's true and actual costs;

(b) The rate of tax under this section that shall be imposed within the city; and

(c) The threshold amount for the first fiscal year following the annexation and passage of the ordinance.

(9) The tax shall cease to be distributed to the city for the remainder of the fiscal year once the threshold amount has been reached. No later than March 1st of each year, the city shall provide the department with a certification of the city's true and actual costs to provide municipal services to the annexed area, a new threshold amount for the next fiscal year, and notice of any applicable tax rate changes. Distributions of tax under this section shall begin again on July 1st of the next fiscal year and continue until the new threshold amount has been reached or June 30th, whichever is sooner. Any revenue generated by the tax in excess of the threshold amount shall belong to the state of Washington. Any amount resulting from the threshold amount less the total fiscal year distributions, as of June 30th, shall not be carried forward to the next fiscal year.

(10) The tax shall cease to be distributed to a city imposing the tax under subsection (3)(b) of this section for the remainder of the fiscal year, if the total distributions to the city imposing the tax exceed five million dollars for the fiscal year.

(11) The following definitions apply throughout this section unless the context clearly requires otherwise:

(a) "Annexation area" means an area that has been annexed to a city under chapter 35.13 or 35A.14 RCW. "Annexation area" includes all territory described in the city resolution.

(b) "Commenced annexation" means the initiation of annexation proceedings has taken place under the direct petition method or the election method under chapter 35.13 or 35A.14 RCW.

(c) "Department" means the department of revenue.

(d) "Municipal services" means those services customarily provided to the public by city government.

(e) "Fiscal year" means the year beginning July 1st and ending the following June 30th.

(f) "Potential annexation area" means one or more geographic areas that a city has officially designated for potential future annexation, as part of its comprehensive plan adoption process under the state growth management act, chapter 36.70A RCW.

(g) "Threshold amount" means the maximum amount of tax distributions as determined by the city in accordance with subsection (7) of this section that the department shall distribute to the city generated from the tax imposed under this section in a fiscal year. [2009 c 550 § 1; 2006 c 361 § 1.]

Severability—2006 c 361: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2006 c 361 § 2.]

82.14.450 Sales and use tax for counties and cities. ***(Effective until January 1, 2015.)*** (1) A county legislative authority may submit an authorizing proposition to the county voters at a primary or general election and, if the proposition is approved by a majority of persons voting, impose a sales and use tax in accordance with the terms of this chapter. The title of each ballot measure must clearly state the purposes for which the proposed sales and use tax will be used. Funds raised under this tax shall not supplant existing funds used for these purposes, except as follows: Up to one hundred percent may be used to supplant existing funding in calendar year 2010; up to eighty percent may be used to supplant existing funding in calendar year 2011; up to sixty percent may be used to supplant existing funding in calendar year 2012; up to forty percent may be used to supplant existing funding in calendar year 2013; and up to twenty percent may be used to supplant existing funding in calendar year 2014. For purposes of this subsection, existing funds means the actual operating expenditures for the calendar year in which the ballot measure is approved by voters. Actual operating expenditures excludes lost federal funds, lost or expired state grants or loans, extraordinary events not likely to reoccur, changes in contract provisions beyond the control of the county or city receiving the services, and major nonrecurring capital expenditures. The rate of tax under this section may not exceed three-tenths of one percent of the selling price in the case of a sales tax, or value of the article used, in the case of a use tax.

(2) The tax authorized in this section is in addition to any other taxes authorized by law and must be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the county.

(3) The retail sale or use of motor vehicles, and the lease of motor vehicles for up to the first thirty-six months of the lease, are exempt from tax imposed under this section.

(4) One-third of all money received under this section must be used solely for criminal justice purposes, fire protection purposes, or both. For the purposes of this subsection, "criminal justice purposes" has the same meaning as provided in RCW 82.14.340.

(5) Money received under this section must be shared between the county and the cities as follows: Sixty percent must be retained by the county and forty percent must be distributed on a per capita basis to cities in the county. [2009 c 551 § 1; 2007 c 380 § 1; 2003 1st sp.s. c 24 § 2.]

Expiration date—2009 c 551 §§ 1 and 2: "Sections 1 and 2 of this act expire January 1, 2015." [2009 c 551 § 12.]

Finding—Intent—2003 1st sp.s. c 24: "The legislature finds that local governments in the state of Washington face enormous challenges in the area of criminal justice and public health. It is the legislature's intent to allow general local governments to raise revenues in order to better protect the health and safety of Washington state and its residents. It is further the intent of the legislature to provide such local governments relief from regulatory burdens that do not harm the public health and safety of the citizens of the state as a means of minimizing the need to generate new revenues authorized under this act." [2003 1st sp.s. c 24 § 1.]

Effective date—2003 1st sp.s. c 24: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2003." [2003 1st sp.s. c 24 § 6.]

Severability—2003 1st sp.s. c 24: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2003 1st sp.s. c 24 § 7.]

82.14.455 Exemptions—Machinery and equipment used in generating electricity. The exemptions in RCW 82.08.962, 82.12.962, 82.08.963, and 82.12.963 are for the state and local sales and use taxes and include the sales and use taxes imposed under the authority of this chapter. [2009 c 469 § 105.]

Effective date—2009 c 469: See note following RCW 82.08.962.

82.14.457 Sales and use tax for digital goods—Apportionment. (1) A business or other organization that is entitled under RCW 82.12.02088 to apportion the amount of state use tax on the use of digital goods, digital codes, digital automated services, prewritten computer software, or services defined as a retail sale in RCW 82.04.050(6)(b) is also entitled to apportion the amount of local use taxes imposed under the authority of this chapter and RCW 81.104.170 on the use of such products or services.

(2) To ensure that the tax base for state and local use taxes is identical, the measure of local use taxes apportioned under this section must be the same as the measure of state use tax apportioned under RCW 82.12.02088.

(3) This section does not affect the sourcing of local use taxes. [2009 c 535 § 703.]

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

82.14.460 Sales and use tax for chemical dependency or mental health treatment services or therapeutic courts. ***(Effective until January 1, 2015.)*** (1) A county legislative authority may authorize, fix, and impose a sales and use tax in accordance with the terms of this chapter.

(2) The tax authorized in this section shall be in addition to any other taxes authorized by law and shall be collected

from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the county. The rate of tax shall equal one-tenth of one percent of the selling price in the case of a sales tax, or value of the article used, in the case of a use tax.

(3) Moneys collected under this section shall be used solely for the purpose of providing for the operation or delivery of chemical dependency or mental health treatment programs and services and for the operation or delivery of therapeutic court programs and services. For the purposes of this section, "programs and services" includes, but is not limited to, treatment services, case management, and housing that are a component of a coordinated chemical dependency or mental health treatment program or service.

(4) All moneys collected under this section must be used solely for the purpose of providing new or expanded programs and services as provided in this section, except a portion of moneys collected under this section may be used to supplant existing funding for these purposes in any county as follows: Up to fifty percent may be used to supplant existing funding in calendar year 2010; up to forty percent may be used to supplant existing funding in calendar year 2011; up to thirty percent may be used to supplant existing funding in calendar year 2012; up to twenty percent may be used to supplant existing funding in calendar year 2013; and up to ten percent may be used to supplant existing funding in calendar year 2014.

(5) Nothing in this section may be interpreted to prohibit the use of moneys collected under this section for the replacement of lapsed federal funding previously provided for the operation or delivery of services and programs as provided in this section. [2009 c 551 § 2; 2008 c 157 § 2; 2005 c 504 § 804.]

Expiration date—2009 c 551 §§ 1 and 2: See note following RCW 82.14.450.

Findings—Intent—2008 c 157: "The legislature finds it necessary to clarify the original intent regarding eligible expenditures of the sales and use tax provided in RCW 82.14.460. The legislature intended that upon the original effective date of RCW 82.14.460, the moneys collected under RCW 82.14.460 would be permitted to be used for the purposes as provided in RCW 82.14.460 as clarified by section 2, chapter 157, Laws of 2008." [2008 c 157 § 1.]

Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504: See notes following RCW 71.05.027.

Alphabetization—Correction of references—2005 c 504: See note following RCW 71.05.020.

82.14.465 Hospital benefit zones—Sales and use tax—Definitions. (1) A city, town, or county that creates a benefit zone and finances public improvements pursuant to chapter 39.100 RCW may impose a sales and use tax in accordance with the terms of this chapter and subject to the criteria set forth in this section. Except as provided in this section, the tax is in addition to other taxes authorized by law and shall be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the taxing jurisdiction of the city, town, or county. The rate of tax shall not exceed the rate provided in RCW 82.08.020(1) in the case of a sales tax or a use tax, less the aggregate rates of any other taxes imposed on the same events that are credited against the state taxes imposed under chapters 82.08 and 82.12 RCW. The tax rate shall be no higher than what is reasonably necessary for the local government to receive its entire annual state contribution in a ten-month period of time.

(2) The tax imposed under subsection (1) of this section shall be deducted from the amount of tax otherwise required to be collected or paid over to the department under chapter 82.08 or 82.12 RCW. The department shall perform the collection of such taxes on behalf of the city, town, or county at no cost to the city, town, or county.

(3) No tax may be imposed under this section before July 1, 2007. Before imposing a tax under this section, the city, town, or county shall first have received tax allocation revenues during the preceding calendar year. The tax imposed under this section shall expire on the earlier of the date: (a) The tax allocation revenues are no longer used for public improvements and public improvement costs; (b) the bonds issued under the authority of chapter 39.100 RCW are retired, if the bonds are issued; or (c) that is thirty years after the tax is first imposed.

(4) An ordinance adopted by the legislative authority of a city, town, or county imposing a tax under this section shall provide that:

(a) The tax shall first be imposed on the first day of a fiscal year;

(b) The amount of tax received by the local government in any fiscal year shall not exceed the amount of the state contribution;

(c) The tax shall cease to be distributed for the remainder of any fiscal year in which either:

(i) The amount of tax distributions totals the amount of the state contribution;

(ii) The amount of tax distributions totals the amount of local public sources, dedicated in the previous calendar year to finance public improvements authorized under chapter 39.100 RCW, expended in the previous year for public improvement costs or used to pay for other bonds issued to pay for public improvements; or

(iii) The amount of revenue from taxes imposed under this section by all cities, towns, and counties totals the annual state credit limit as provided in RCW 82.32.700(3);

(d) The tax shall be distributed again, should it cease to be distributed for any of the reasons provided in (c) of this subsection, at the beginning of the next fiscal year, subject to the restrictions in this section; and

(e) Any revenue generated by the tax in excess of the amounts specified in (b) and (c) of this subsection shall belong to the state of Washington.

(5) If both a county and a city or town impose a tax under this section, the tax imposed by the city, town, or county shall be credited as follows:

(a) If the county has created a benefit zone before the city or town, the tax imposed by the county shall be credited against the tax imposed by the city or town, the purpose of such credit is to give priority to the county tax; and

(b) If the city or town has created a benefit zone before the county, the tax imposed by the city or town shall be credited against the tax imposed by the county, the purpose of such credit is to give priority to the city or town tax.

(6) The department shall determine the amount of tax distributions attributable to each city, town, and county

imposing a sales and use tax under this section and shall advise a city, town, or county when the tax will cease to be distributed for the remainder of the fiscal year as provided in subsection (4)(c) of this section. Determinations by the department of the amount of taxes attributable to a city, town, or county are final and shall not be used to challenge the validity of any tax imposed under this section. The department shall remit any tax revenues in excess of the amounts specified in subsection (4)(b) and (c) of this section to the state treasurer who shall deposit the moneys in the general fund.

(7) The definitions in this subsection apply throughout this section and RCW 82.14.470 unless the context clearly requires otherwise.

(a) "Base year" means the calendar year immediately following the creation of a benefit zone.

(b) "Benefit zone" has the same meaning as provided in RCW 39.100.010.

(c) "Excess local excise taxes" has the same meaning as provided in RCW 39.100.050.

(d) "Excess state excise taxes" means the amount of excise taxes received by the state during the measurement year from taxable activity within the benefit zone over and above the amount of excise taxes received by the state during the base year from taxable activity within the benefit zone. However, if a local government creates the benefit zone and reasonably determines that no activity subject to tax under chapters 82.08 and 82.12 RCW occurred in the twelve months immediately preceding the creation of the benefit zone within the boundaries of the area that became the benefit zone, "excess state excise taxes" means the entire amount of state excise taxes the state receives during a calendar year period beginning with the calendar year immediately following the creation of the benefit zone and continuing with each measurement year thereafter.

(e) "State excise taxes" means revenues derived from state retail sales and use taxes under chapters 82.08 and 82.12 RCW, less the amount of tax distributions from all local retail sales and use taxes imposed on the same taxable events that are credited against the state retail sales and use taxes under chapters 82.08 and 82.12 RCW except for the local tax authorized in this section.

(f) "Fiscal year" has the same meaning as provided in RCW 39.100.030.

(g) "Measurement year" means a calendar year, beginning with the calendar year following the base year and each calendar year thereafter, that is used annually to measure the amount of excess state excise taxes and excess local excise taxes.

(h) "State contribution" means the lesser of two million dollars or an amount equal to excess state excise taxes received by the state during the preceding calendar year.

(i) "Tax allocation revenues" has the same meaning as provided in RCW 39.100.010.

(j) "Public improvements" and "public improvement costs" have the same meanings as provided in RCW 39.100.010.

(k) "Local public sources" includes, but is not limited to, private monetary contributions, assessments, dedicated local government funds, and tax allocation revenues. "Local public sources" does not include local government funds derived from any state loan or state grant, any local tax that is credited against the state sales and use taxes, or any other state funds. [2009 c 535 § 1109; 2007 c 266 § 7; 2006 c 111 § 7.]

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Finding—Application—Effective date—2007 c 266: See notes following RCW 39.100.010.

Effective date—2006 c 111: See RCW 39.100.900.

82.14.475 Sales and use tax for the local infrastructure financing tool program. ***(Expires June 30, 2039.)*** (1) A sponsoring local government, and any cosponsoring local government, that has been approved by the board to use local infrastructure financing may impose a sales and use tax in accordance with the terms of this chapter and subject to the criteria set forth in this section. Except as provided in this section, the tax is in addition to other taxes authorized by law and shall be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the taxing jurisdiction of the sponsoring local government or cosponsoring local government.

(2) The tax authorized under subsection (1) of this section shall be credited against the state taxes imposed under RCW 82.08.020(1) and 82.12.020 at the rate provided in RCW 82.08.020(1). The department shall perform the collection of such taxes on behalf of the sponsoring local government or cosponsoring local government at no cost to the sponsoring local government or cosponsoring local government and shall remit the taxes as provided in RCW 82.14.060.

(3) The aggregate rate of tax imposed by the sponsoring local government, and any cosponsoring local government, must not exceed the lesser of:

(a) The rate provided in RCW 82.08.020(1) less:

(i) The aggregate rates of all other local sales and use taxes imposed by any taxing authority on the same taxable events;

(ii) The aggregate rates of all taxes under RCW 82.14.465 and this section that are authorized to be imposed on the same taxable events but have not yet been imposed by a sponsoring local government or cosponsoring local government that has been approved by the department or the community economic revitalization board to receive a state contribution under chapters [chapter] 39.100 or 39.102 RCW; and

(iii) The percentage amount of distributions required under RCW 82.08.020(5) multiplied by the rate of state taxes imposed under RCW 82.08.020(1); and

(b) The rate, as determined by the sponsoring local government, and any cosponsoring local government, in consultation with the department, reasonably necessary to receive the state contribution over ten months.

(4) Sponsoring local governments that have been approved before October 1, 2008, by the community economic revitalization board for a state contribution must select the rate of tax under this section no later than September 1, 2009.

(5) The department, upon request, must assist a sponsoring local government and cosponsoring local government in establishing their tax rate in accordance with subsection (3)

of this section. Once the rate of tax is selected, it may not be increased.

(6)(a) No tax may be imposed under the authority of this section:

(i) Before July 1, 2008;

(ii) Before July 1st of the second calendar year following the year approval by the board under RCW 39.102.040 was made; and

(iii) Before the state excise tax allocation revenues and state property tax allocation revenues for the preceding calendar year equal or exceed the amount of project award approved by the board under RCW 39.102.040.

(b) The tax imposed under this section shall expire when all indebtedness issued under the authority of RCW 39.102.150 is retired and all other contractual obligations relating to the financing of public improvements under chapter 39.102 RCW are satisfied, but not more than twenty-five years after the tax is first imposed.

(7) An ordinance adopted by the legislative authority of a sponsoring local government or cosponsoring local government imposing a tax under this section shall provide that:

(a) The tax shall first be imposed on the first day of a fiscal year;

(b) The cumulative amount of tax received by the sponsoring local government, and any cosponsoring local government, in any fiscal year shall not exceed the amount of the state contribution;

(c) The tax shall cease to be distributed for the remainder of any fiscal year in which either:

(i) The amount of tax received by the sponsoring local government, and any cosponsoring local government, equals the amount of the state contribution;

(ii) The amount of revenue from taxes imposed under this section by all sponsoring and cosponsoring local governments equals the annual state contribution limit; or

(iii) The amount of tax received by the sponsoring local government equals the amount of project award granted in the approval notice described in RCW 39.102.040;

(d) Neither the local excise tax allocation revenues nor the local property tax allocation revenues may constitute more than eighty percent of the total local funds as described in RCW 39.102.020(28)(b). This requirement applies beginning January 1st of the fifth calendar year after the calendar year in which the sponsoring local government begins allocating local excise tax allocation revenues under RCW 39.102.110;

(e) The tax shall be distributed again, should it cease to be distributed for any of the reasons provided in (c) of this subsection, at the beginning of the next fiscal year, subject to the restrictions in this section; and

(f) Any revenue generated by the tax in excess of the amounts specified in (c) of this subsection shall belong to the state of Washington.

(8) If a county and city cosponsor a revenue development area, the combined amount of distributions received by both the city and county may not exceed the state contribution.

(9) The department shall determine the amount of tax receipts distributed to each sponsoring local government, and any cosponsoring local government, imposing sales and use tax under this section and shall advise a sponsoring or cosponsoring local government when tax distributions for the fiscal year equal the amount of state contribution for that fiscal year as provided in subsection (11) of this section. Determinations by the department of the amount of tax distributions attributable to each sponsoring or cosponsoring local government are final and shall not be used to challenge the validity of any tax imposed under this section. The department shall remit any tax receipts in excess of the amounts specified in subsection (7)(c) of this section to the state treasurer who shall deposit the money in the general fund.

(10) If a sponsoring or cosponsoring local government fails to comply with RCW 39.102.140, no tax may be distributed in the subsequent fiscal year until such time as the sponsoring or cosponsoring local government complies and the department calculates the state contribution amount for such fiscal year.

(11) Each year, the amount of taxes approved by the department for distribution to a sponsoring or cosponsoring local government in the next fiscal year shall be equal to the state contribution and shall be no more than the total local funds as described in RCW 39.102.020(28)(b). The department shall consider information from reports described in RCW 39.102.140 when determining the amount of state contributions for each fiscal year. A sponsoring or cosponsoring local government shall not receive, in any fiscal year, more revenues from taxes imposed under the authority of this section than the amount approved annually by the department. The department shall not approve the receipt of more distributions of sales and use tax under this section to a sponsoring or cosponsoring local government than is authorized under subsection (7) of this section.

(12) The amount of tax distributions received from taxes imposed under the authority of this section by all sponsoring and cosponsoring local governments is limited annually to not more than seven million five hundred thousand dollars.

(13) The definitions in RCW 39.102.020 apply to this section unless the context clearly requires otherwise.

(14) If a sponsoring local government is a federally recognized Indian tribe, the distribution of the sales and use tax authorized under this section shall be authorized through an interlocal agreement pursuant to chapter 39.34 RCW.

(15) Subject to RCW 39.102.195, the tax imposed under the authority of this section may be applied either to provide for the payment of debt service on bonds issued under RCW 39.102.150 by the sponsoring local government or to pay public improvement costs on a pay-as-you-go basis, or both.

(16) The tax imposed under the authority of this section shall cease to be imposed if the sponsoring local government or cosponsoring local government fails to issue indebtedness under the authority of RCW 39.102.150, and fails to commence construction on public improvements, by June 30th of the fifth fiscal year in which the local tax authorized under this section is imposed.

(17) For purposes of this section, the following definitions apply:

(a) "Local sales and use taxes" means sales and use taxes imposed by cities, counties, public facilities districts, and other local governments under the authority of this chapter, chapter 67.28 or 67.40 RCW, or any other chapter, and that are credited against the state sales and use taxes.

(b) "State sales and use taxes" means the tax imposed in RCW 82.08.020(1) and the tax imposed in RCW 82.12.020 at the rate provided in RCW 82.08.020(1). [2009 c 267 § 8; 2007 c 229 § 8; 2006 c 181 § 401.]

Expiration date—2009 c 267: See note following RCW 39.102.020.

Application—Severability—Expiration date—2007 c 229: See notes following RCW 39.102.020.

Captions and part headings not law—Severability—Construction—Effective date—Expiration date—2006 c 181: See RCW 39.102.900 through 39.102.904.

82.14.495 Streamlined sales and use tax mitigation account—Creation. (1) The streamlined sales and use tax mitigation account is created in the state treasury. The state treasurer shall transfer into the account from the general fund amounts as directed in RCW 82.14.500. Expenditures from the account may be used only for the purpose of mitigating the negative fiscal impacts to local taxing jurisdictions as a result of RCW 82.14.490 and the chapter 6, Laws of 2007 amendments to RCW 82.14.020. During the 2007-2009 fiscal biennium, the legislature may transfer from the streamlined sales and use tax mitigation account to the state general fund such amounts as reflect the excess fund balance of the account.

(2) Beginning July 1, 2008, the state treasurer, as directed by the department, shall distribute the funds in the streamlined sales and use tax mitigation account to local taxing jurisdictions in accordance with RCW 82.14.500.

(3) The definitions in this subsection apply throughout this section and RCW 82.14.390 and 82.14.500.

(a) "Agreement" means the same as in RCW 82.32.020.

(b) "Local taxing jurisdiction" means counties, cities, transportation authorities under RCW 82.14.045, public facilities districts under chapters 36.100 and 35.57 RCW, public transportation benefit areas under RCW 82.14.440, and regional transit authorities under chapter 81.112 RCW, that impose a sales and use tax.

(c) "Loss" or "losses" means the local sales and use tax revenue reduction to a local taxing jurisdiction resulting from the sourcing provisions in RCW 82.14.490 and the chapter 6, Laws of 2007 amendments to RCW 82.14.020.

(d) "Net loss" or "net losses" means a loss offset by any voluntary compliance revenue.

(e) "Voluntary compliance revenue" means the local sales tax revenue gain to each local taxing jurisdiction reported to the department from persons registering through the central registration system authorized under the agreement.

(f) "Working day" has the same meaning as in RCW 82.45.180. [2009 c 4 § 907; 2007 c 6 § 902.]

Effective date—2009 c 4: See note following RCW 28A.505.220.

Findings—Intent—2007 c 6: "(1) The legislature finds and declares that:

(a) Washington state's participation as a member state in the streamlined sales and use tax agreement benefits the state, all its local taxing jurisdictions, and its retailing industry, by increasing state and local revenues, improving the state's business climate, and standardizing and simplifying the state's tax structure;

(b) Participation in the streamlined sales and use tax agreement is a matter of statewide concern and is in the best interests of the state, the general public, and all local jurisdictions that impose a sales and use tax under applicable law;

(c) Participation in the streamlined sales and use tax agreement requires the adoption of the agreement's sourcing provisions, which change the location in which a retail sale of delivered tangible personal property occurs for local sales tax purposes from the point of origin to the point of destination;

(d) Changes in the local sales tax sourcing law provisions to conform with the streamlined sales and use tax agreement will cause sales tax revenues to shift among local taxing jurisdictions. The legislature finds that there will be an unintended adverse impact on local taxing jurisdictions that receive less revenues because local tax revenues will be redistributed, with revenue increases for some jurisdictions and reductions for others, due solely to changes in local sales tax sourcing rules to be implemented under RCW 82.14.490 and the chapter 6, Laws of 2007 amendments to RCW 82.14.020, even though no local taxing jurisdiction has changed its tax rate or tax base;

(e) The purpose of providing mitigation to such jurisdictions is to mitigate the unintended revenue redistribution effect of the sourcing law changes among local governments;

(f) It is in the best interest of the state and all its subdivisions to mitigate the adverse effects of amending the local sales tax sourcing provisions to be in conformance with the streamlined sales and use tax agreement;

(g) Additionally, changes in sourcing laws may have negative implications for industry sectors such as warehousing and manufacturing, as well as jurisdictions that house a concentration of these industries and have made zoning decisions, infrastructure investments, bonding decisions, and land use policy decisions based on point of origin sales tax rules in place before July 1, 2008, and the mitigation provided by RCW 82.14.495, 82.14.500, 82.14.390, and 44.28.815 is intended to help offset those negative implications; and

(h) It is important that the state of Washington maintain its supply of industrial land for present and future economic development activities, and local governments taking advantage of the mitigation provided by RCW 82.14.495, 82.14.500, 82.14.390, and 44.28.815 should strive to maintain the supply of industrial land available for economic development efforts.

(2) The legislature intends that the streamlined sales and use tax mitigation account established in RCW 82.14.495 have the sole objective of mitigating, for negatively affected local taxing jurisdictions, the net local sales tax revenue reductions incurred as a result of RCW 82.14.490 and the chapter 6, Laws of 2007 amendments to RCW 82.14.020." [2007 c 6 § 901.]

Part headings not law—Savings—Effective date—Severability—2007 c 6: See notes following RCW 82.32.020.

82.14.505 Local revitalization financing—Demonstration projects. (1) Demonstration projects are designated to determine the feasibility of local revitalization financing. For the purpose of this section, "annual state contribution limit" means two million two hundred fifty thousand dollars statewide per fiscal year. Notwithstanding RCW 39.104.100, the department shall approve each demonstration project as follows:

(a) The Whitman county Pullman/Moscow corridor improvement project award shall not exceed two hundred thousand dollars;

(b) The University Place improvement project award shall not exceed five hundred thousand dollars;

(c) The Tacoma international financial services area/Tacoma dome project award shall not exceed five hundred thousand dollars;

(d) The Bremerton downtown improvement project award shall not exceed three hundred thirty thousand dollars;

(e) The Auburn downtown redevelopment project award shall not exceed two hundred fifty thousand dollars;

(f) The Vancouver Columbia waterfront/downtown project award shall not exceed two hundred twenty thousand dollars; and

(g) The Spokane University District project award shall not exceed two hundred fifty thousand dollars.

(2) Local government sponsors of demonstration projects must submit to the department no later than September 1, 2009, documentation that substantiates that the project

has met the conditions, limitations, and requirements provided in chapter 270, Laws of 2009.

(3) Within sixty days of such submittal, the department shall approve demonstration projects that have met these conditions, limitations, and requirements.

(4) Local government sponsors of demonstration projects may elect to decline the project awards as designated in this section, and may elect instead to submit applications according to the process described in RCW 39.104.100. [2009 c 270 § 402.]

82.14.510 Sales and use tax for local revitalization financing. (1) Any city or county that has been approved for a project award under RCW 39.104.100 may impose a sales and use tax under the authority of this section in accordance with the terms of this chapter. Except as provided in this section, the tax is in addition to other taxes authorized by law and must be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the taxing jurisdiction of the city or county.

(2) The tax authorized under subsection (1) of this section is credited against the state taxes imposed under RCW 82.08.020(1) and 82.12.020 at the rate provided in RCW 82.08.020(1). The department must perform the collection of such taxes on behalf of the city or county at no cost to the city or county. The taxes must be distributed to cities and counties as provided in RCW 82.14.060.

(3) The rate of tax imposed by a city or county may not exceed the lesser of:

(a) The rate provided in RCW 82.08.020(1), less:

(i) The aggregate rates of all other local sales and use taxes imposed by any taxing authority on the same taxable events;

(ii) The aggregate rates of all taxes under RCW 82.14.465 and 82.14.475 and this section that are authorized but have not yet been imposed on the same taxable events by a city or county that has been approved to receive a state contribution by the department or the community economic revitalization board under chapter 39.104, 39.100, or 39.102 RCW; and

(iii) The percentage amount of distributions required under RCW 82.08.020(5) multiplied by the rate of state taxes imposed under RCW 82.08.020(1); and

(b) The rate, as determined by the city or county in consultation with the department, reasonably necessary to receive the project award under RCW 39.104.100 over ten months.

(4) The department, upon request, must assist a city or county in establishing its tax rate in accordance with subsection (3) of this section. Once the rate of tax is selected through the application process and approved under RCW 39.104.100, it may not be increased.

(5)(a) Except as provided in (c) of this subsection, no tax may be imposed under the authority of this section before:

(i) July 1, 2011;

(ii) July 1st of the second calendar year following the year in which the department approved the application made under RCW 39.104.100;

(iii) The state sales and use tax increment and state property tax increment for the preceding calendar year equal or exceed the amount of the project award approved by the department under RCW 39.104.100; and

(iv) Bonds have been issued according to RCW 39.104.110.

(b) The tax imposed under this section expires the earlier of the date that the bonds issued under the authority of RCW 39.104.110 are retired or twenty-five years after the tax is first imposed.

(c) For a demonstration project described in RCW 82.14.505, no tax may be imposed under the authority of this section before:

(i) July 1, 2010; and

(ii) Bonds have been issued according to RCW 39.104.110.

(6) An ordinance or resolution adopted by the legislative authority of the city or county imposing a tax under this section must provide that:

(a) The tax will first be imposed on the first day of a fiscal year;

(b) The cumulative amount of tax received by the city or county, in any fiscal year, may not exceed the amount approved by the department under subsection (10) of this section;

(c) The department must cease distributing the tax for the remainder of any fiscal year in which either:

(i) The amount of tax received by the city or county equals the amount of distributions approved by the department for the fiscal year under subsection (10) of this section; or

(ii) The amount of revenue from taxes imposed under this section by all cities and counties equals the annual state contribution limit;

(d) The tax will be distributed again, should it cease to be distributed for any of the reasons provided in (c) of this subsection, at the beginning of the next fiscal year, subject to the restrictions in this section; and

(e) The state is entitled to any revenue generated by the tax in excess of the amounts specified in (c) of this subsection.

(7) If a city or county receives approval for more than one revitalization area within its jurisdiction, the city or county may impose a sales and use tax under this section for each revitalization area.

(8) The department must determine the amount of tax receipts distributed to each city and county imposing a sales and use tax under the authority of this section and must advise a city or county when tax distributions for the fiscal year equal the amount determined by the department in subsection (10) of this section. Determinations by the department of the amount of tax distributions attributable to a city or county are not appealable. The department must remit any tax receipts in excess of the amounts specified in subsection (6)(c) of this section to the state treasurer who must deposit the money in the general fund.

(9) If a city or county fails to comply with RCW 82.32.765, no tax may be distributed in the subsequent fiscal year until such time as the city or county complies and the department calculates the state contribution amount according to subsection (10) of this section for the fiscal year.

(10)(a) For each fiscal year that a city or county imposes the tax under the authority of this section, the department

must approve the amount of taxes that may be distributed to the city or county. The amount approved by the department under this subsection is the lesser of:

(i) The state contribution;

(ii) The amount of project award granted by the department as provided in RCW 39.104.100; or

(iii) The total amount of revenues from local public sources dedicated in the preceding calendar year, as reported in the required annual report under RCW 82.32.765.

(b) A city or county may not receive, in any fiscal year, more revenues from taxes imposed under the authority of this section than the amount approved annually by the department.

(11) The amount of tax distributions received from taxes imposed under the authority of this section by all cities and counties is limited annually to not more than the amount of annual state contribution limit.

(12) The definitions in RCW 39.104.020 apply to this section subject to subsection (13) of this section and unless the context clearly requires otherwise.

(13) For purposes of this section, the following definitions apply:

(a) "Local sales and use taxes" means sales and use taxes imposed by cities, counties, public facilities districts, and other local governments under the authority of this chapter, chapter 67.28 or 67.40 RCW, or any other chapter, and that are credited against the state sales and use taxes.

(b) "State sales and use taxes" means the taxes imposed in RCW 82.08.020(1) and 82.12.020. [2009 c 270 § 601.]

82.14.515 Use of sales and use tax funds—Local revitalization financing. Money collected from the taxes imposed under RCW 82.14.510 may be used only for the purpose of paying debt service on bonds issued under the authority in RCW 39.104.110. [2009 c 270 § 602.]

Chapter 82.14B RCW

COUNTIES—TAX ON TELEPHONE ACCESS LINE USE

Sections

82.14B.042 Payment and collection of taxes—Penalties for violations. *(Effective January 1, 2010.)*

82.14B.200 Burden of proof that sale is not to subscriber—Effect of resale certificate—Liability if no retail certificate—Penalties—Exceptions. *(Effective January 1, 2010.)*

82.14B.042 Payment and collection of taxes—Penalties for violations. ***(Effective January 1, 2010.)*** (1) The state enhanced 911 excise taxes imposed by this chapter must be paid by the subscriber to the local exchange company providing the switched access line or the radio communications service company providing the radio access line, and each local exchange company and each radio communications service company shall collect from the subscriber the full amount of the taxes payable. The state enhanced 911 excise taxes required by this chapter to be collected by the local exchange company or the radio communications service company are deemed to be held in trust by the local exchange company or the radio communications service company until paid to the department. Any local exchange company or radio communications service company that appropriates or converts the tax collected to its own use or to any use other than the payment of the tax to the extent that the money collected is not available for payment on the due date as prescribed in this chapter is guilty of a gross misdemeanor.

(2) If any local exchange company or radio communications service company fails to collect the state enhanced 911 excise tax or, after collecting the tax, fails to pay it to the department in the manner prescribed by this chapter, whether such failure is the result of its own act or the result of acts or conditions beyond its control, the local exchange company or the radio communications service company is personally liable to the state for the amount of the tax, unless the local exchange company or the radio communications service company has taken from the buyer in good faith documentation, in a form and manner prescribed by the department, stating that the buyer is not a subscriber or is otherwise not liable for the state enhanced 911 tax.

(3) The amount of tax, until paid by the subscriber to the local exchange company, the radio communications service company, or to the department, constitutes a debt from the subscriber to the local exchange company or the radio communications service company. Any local exchange company or radio communications service company that fails or refuses to collect the tax as required with intent to violate the provisions of this chapter or to gain some advantage or benefit, either direct or indirect, and any subscriber who refuses to pay any tax due under this chapter is guilty of a misdemeanor. The state enhanced 911 excise taxes required by this chapter to be collected by the local exchange company or the radio communications service company must be stated separately on the billing statement that is sent to the subscriber.

(4) If a subscriber has failed to pay to the local exchange company or the radio communications service company the state enhanced 911 excise taxes imposed by this chapter and the local exchange company or the radio communications service company has not paid the amount of the tax to the department, the department may, in its discretion, proceed directly against the subscriber for collection of the tax, in which case a penalty of ten percent may be added to the amount of the tax for failure of the subscriber to pay the tax to the local exchange company or the radio communications service company, regardless of when the tax is collected by the department. Tax under this chapter is due as provided under RCW 82.14B.061. [2009 c 563 § 208; 2002 c 341 § 10; 2000 c 106 § 2; 1998 c 304 § 9.]

Finding—Intent—Construction—Effective date—Reports and recommendations—2009 c 563: See notes following RCW 82.32.780.

Severability—Effective date—2002 c 341: See notes following RCW 38.52.501.

Effective date—2000 c 106: See note following RCW 82.32.330.

Findings—Effective dates—1998 c 304: See notes following RCW 82.14B.020.

82.14B.200 Burden of proof that sale is not to subscriber—Effect of resale certificate—Liability if no retail certificate—Penalties—Exceptions. ***(Effective January 1, 2010.)*** (1) Unless a local exchange company or a radio communications service company has taken from the buyer documentation, in a form and manner prescribed by the department, stating that the buyer is not a subscriber or is otherwise

not liable for the tax, the burden of proving that a sale of the use of a switched access line or radio access line was not a sale to a subscriber or was not otherwise subject to the tax is upon the person who made the sale.

(2) If a local exchange company or a radio communications service company does not receive documentation, in a form and manner prescribed by the department, stating that the buyer is not a subscriber or is otherwise not liable for the tax at the time of the sale, have such documentation on file at the time of the sale, or obtain such documentation from the buyer within a reasonable time after the sale, the local exchange company or the radio communications service company remains liable for the tax as provided in RCW 82.14B.042, unless the local exchange company or the radio communications service company can demonstrate facts and circumstances according to rules adopted by the department of revenue that show the sale was properly made without payment of the state enhanced 911 excise tax.

(3) The penalty imposed by RCW 82.32.291 may not be assessed on state enhanced 911 excise taxes due but not paid as a result of the improper use of documentation stating that the buyer is not a subscriber or is otherwise not liable for the state enhanced 911 tax. This subsection does not prohibit or restrict the application of other penalties authorized by law. [2009 c 563 § 209; 2002 c 341 § 12; 1998 c 304 § 10.]

Finding—Intent—Construction—Effective date—Reports and recommendations—2009 c 563: See notes following RCW 82.32.780.

Severability—Effective date—2002 c 341: See notes following RCW 38.52.501.

Findings—Effective dates—1998 c 304: See notes following RCW 82.14B.020.

Chapter 82.16 RCW
PUBLIC UTILITY TAX

Sections

82.16.010 Definitions. *(Effective until June 30, 2013.)*
82.16.010 Definitions. *(Effective June 30, 2013.)*
82.16.020 Public utility tax imposed—Additional tax imposed—Deposit of moneys. *(Effective until June 30, 2013.)*
82.16.0421 Exemptions—Sales to electrolytic processing businesses. *(Expires June 30, 2019.)*
82.16.110 Renewable energy system cost recovery—Definitions.
82.16.120 Renewable energy system cost recovery—Application to light/power business—Certification—Limitations.
82.16.130 Renewable energy system cost recovery—Light/power business tax credit.

82.16.010 Definitions. *(Effective until June 30, 2013.)*

For the purposes of this chapter, unless otherwise required by the context:

(1) "Express business" means the business of carrying property for public hire on the line of any common carrier operated in this state, when such common carrier is not owned or leased by the person engaging in such business.

(2) "Gas distribution business" means the business of operating a plant or system for the production or distribution for hire or sale of gas, whether manufactured or natural.

(3) "Gross income" means the value proceeding or accruing from the performance of the particular public service or transportation business involved, including operations incidental thereto, but without any deduction on account of the cost of the commodity furnished or sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses.

(4) "Light and power business" means the business of operating a plant or system for the generation, production or distribution of electrical energy for hire or sale and/or for the wheeling of electricity for others.

(5) "Log transportation business" means the business of transporting logs by truck, other than exclusively upon private roads.

(6) "Motor transportation business" means the business (except urban transportation business) of operating any motor propelled vehicle by which persons or property of others are conveyed for hire, and includes, but is not limited to, the operation of any motor propelled vehicle as an auto transportation company (except urban transportation business), common carrier, or contract carrier as defined by RCW 81.68.010 and 81.80.010. However, "motor transportation business" does not mean or include: (a) A log transportation business; or (b) the transportation of logs or other forest products exclusively upon private roads or private highways.

(7)(a) "Public service business" means any of the businesses defined in subsections (1), (2), (4), (6), (8), (9), (10), (12), and (13) of this section or any business subject to control by the state, or having the powers of eminent domain and the duties incident thereto, or any business hereafter declared by the legislature to be of a public service nature, except telephone business and low-level radioactive waste site operating companies as redefined in RCW 81.04.010. It includes, among others, without limiting the scope hereof: Airplane transportation, boom, dock, ferry, pipe line, toll bridge, toll logging road, water transportation and wharf businesses.

(b) The definitions in this subsection (7)(b) apply throughout this subsection (7).

(i) "Competitive telephone service" has the same meaning as in RCW 82.04.065.

(ii) "Network telephone service" means the providing by any person of access to a telephone network, telephone network switching service, toll service, or coin telephone services, or the providing of telephonic, video, data, or similar communication or transmission for hire, via a telephone network, toll line or channel, cable, microwave, or similar communication or transmission system. "Network telephone service" includes the provision of transmission to and from the site of an internet provider via a telephone network, toll line or channel, cable, microwave, or similar communication or transmission system. "Network telephone service" does not include the providing of competitive telephone service, the providing of cable television service, the providing of broadcast services by radio or television stations, nor the provision of internet access as defined in RCW 82.04.297, including the reception of dial-in connection, provided at the site of the internet service provider.

(iii) "Telephone business" means the business of providing network telephone service. It includes cooperative or farmer line telephone companies or associations operating an exchange.

(iv) "Telephone service" means competitive telephone service or network telephone service, or both, as defined in (b)(i) and (ii) of this subsection.

(8) "Railroad business" means the business of operating any railroad, by whatever power operated, for public use in the conveyance of persons or property for hire. It shall not, however, include any business herein defined as an urban transportation business.

(9) "Railroad car business" means the business of operating stock cars, furniture cars, refrigerator cars, fruit cars, poultry cars, tank cars, sleeping cars, parlor cars, buffet cars, tourist cars, or any other kinds of cars used for transportation of property or persons upon the line of any railroad operated in this state when such railroad is not owned or leased by the person engaging in such business.

(10) "Telegraph business" means the business of affording telegraphic communication for hire.

(11) "Tugboat business" means the business of operating tugboats, towboats, wharf boats or similar vessels in the towing or pushing of vessels, barges or rafts for hire.

(12) "Urban transportation business" means the business of operating any vehicle for public use in the conveyance of persons or property for hire, insofar as (a) operating entirely within the corporate limits of any city or town, or within five miles of the corporate limits thereof, or (b) operating entirely within and between cities and towns whose corporate limits are not more than five miles apart or within five miles of the corporate limits of either thereof. Included herein, but without limiting the scope hereof, is the business of operating passenger vehicles of every type and also the business of operating cartage, pickup, or delivery services, including in such services the collection and distribution of property arriving from or destined to a point within or without the state, whether or not such collection or distribution be made by the person performing a local or interstate line-haul of such property.

(13) "Water distribution business" means the business of operating a plant or system for the distribution of water for hire or sale.

(14) The meaning attributed, in chapter 82.04 RCW, to the term "tax year," "person," "value proceeding or accruing," "business," "engaging in business," "in this state," "within this state," "cash discount" and "successor" shall apply equally in the provisions of this chapter. [2009 c 535 § 1110; 2009 c 469 § 701; 2007 c 6 § 1023; 1996 c 150 § 1; 1994 c 163 § 4; 1991 c 272 § 14; 1989 c 302 § 203. Prior: 1989 c 302 § 102; 1986 c 226 § 1; 1983 2nd ex.s. c 3 § 32; 1982 2nd ex.s. c 9 § 1; 1981 c 144 § 2; 1965 ex.s. c 173 § 20; 1961 c 293 § 12; 1961 c 15 § 82.16.010; prior: 1959 ex.s. c 3 § 15; 1955 c 389 § 28; 1949 c 228 § 10; 1943 c 156 § 10; 1941 c 178 § 12; 1939 c 225 § 20; 1937 c 227 § 11; 1935 c 180 § 37; Rem. Supp. 1949 § 8370-37.]

Reviser's note: (1) The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

(2) This section was amended by 2009 c 469 § 701 and by 2009 c 535 § 1110, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Expiration date—2009 c 469 §§ 701 and 702: "Sections 701 and 702 of this act expire June 30, 2013." [2009 c 469 § 905.]

Effective date—2009 c 469: See note following RCW 82.08.962.

Part headings not law—Savings—Effective date—Severability—2007 c 6: See notes following RCW 82.32.020.

Findings—Intent—2007 c 6: See note following RCW 82.14.495.

Effective date—1996 c 150: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 25, 1996]." [1996 c 150 § 3.]

Effective dates—1991 c 272: See RCW 81.108.901.

Finding, purpose—1989 c 302: See note following RCW 82.04.120.

Effective date—1986 c 226: "This act shall take effect July 1, 1986." [1986 c 226 § 3.]

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Effective date—1982 2nd ex.s. c 9: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect August 1, 1982." [1982 2nd ex.s. c 9 § 4.]

Intent—1981 c 144: "The legislature recognizes that there have been significant changes in the nature of the telephone business in recent years. Once solely the domain of regulated monopolies, the telephone business has now been opened up to competition with respect to most of its services and equipment. As a result of this competition, the state and local excise tax structure in the state of Washington has become discriminatory when applied to regulated telephone company transactions that are similar in nature to those consummated by nonregulated competitors. Telephone companies are forced to operate at a significant state and local tax disadvantage when compared to these nonregulated competitors.

To remedy this situation, it is the intent of the legislature to place telephone companies and nonregulated competitors of telephone companies on an equal excise tax basis with regard to the providing of similar goods and services. Therefore competitive telephone services shall for excise tax purposes only, unless otherwise provided, be treated as retail sales under the applicable state and local business and occupation and sales and use taxes. This shall not affect any requirement that regulated telephone companies have under Title 80 RCW, unless otherwise provided.

Nothing in this act affects the authority and responsibility of the Washington utilities and transportation commission to set fair, just, reasonable, and sufficient rates for telephone service." [1981 c 144 § 1.]

Severability—1981 c 144: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 144 § 12.]

Effective date—1981 c 144: "This act shall take effect on January 1, 1982." [1981 c 144 § 13.]

Effective date—1965 ex.s. c 173: See note following RCW 82.04.050.

82.16.010 Definitions. ***(Effective June 30, 2013.)*** For the purposes of this chapter, unless otherwise required by the context:

(1) "Express business" means the business of carrying property for public hire on the line of any common carrier operated in this state, when such common carrier is not owned or leased by the person engaging in such business.

(2) "Gas distribution business" means the business of operating a plant or system for the production or distribution for hire or sale of gas, whether manufactured or natural.

(3) "Gross income" means the value proceeding or accruing from the performance of the particular public service or transportation business involved, including operations incidental thereto, but without any deduction on account of the cost of the commodity furnished or sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses.

(4) "Light and power business" means the business of operating a plant or system for the generation, production or distribution of electrical energy for hire or sale and/or for the wheeling of electricity for others.

(5) "Motor transportation business" means the business (except urban transportation business) of operating any motor propelled vehicle by which persons or property of others are conveyed for hire, and includes, but is not limited to, the operation of any motor propelled vehicle as an auto transportation company (except urban transportation business), common carrier, or contract carrier as defined by RCW 81.68.010 and 81.80.010. However, "motor transportation business" does not mean or include the transportation of logs or other forest products exclusively upon private roads or private highways.

(6)(a) "Public service business" means any of the businesses defined in subsections (1), (2), (4), (5), (7), (8), (9), (11), and (12) of this section or any business subject to control by the state, or having the powers of eminent domain and the duties incident thereto, or any business hereafter declared by the legislature to be of a public service nature, except telephone business and low-level radioactive waste site operating companies as redefined in RCW 81.04.010. It includes, among others, without limiting the scope hereof: Airplane transportation, boom, dock, ferry, pipe line, toll bridge, toll logging road, water transportation and wharf businesses.

(b) The definitions in this subsection (6)(b) apply throughout this subsection (6).

(i) "Competitive telephone service" has the same meaning as in RCW 82.04.065.

(ii) "Network telephone service" means the providing by any person of access to a telephone network, telephone network switching service, toll service, or coin telephone services, or the providing of telephonic, video, data, or similar communication or transmission for hire, via a telephone network, toll line or channel, cable, microwave, or similar communication or transmission system. "Network telephone service" includes the provision of transmission to and from the site of an internet provider via a telephone network, toll line or channel, cable, microwave, or similar communication or transmission system. "Network telephone service" does not include the providing of competitive telephone service, the providing of cable television service, the providing of broadcast services by radio or television stations, nor the provision of internet access as defined in RCW 82.04.297, including the reception of dial-in connection, provided at the site of the internet service provider.

(iii) "Telephone business" means the business of providing network telephone service. It includes cooperative or farmer line telephone companies or associations operating an exchange.

(iv) "Telephone service" means competitive telephone service or network telephone service, or both, as defined in (b)(i) and (ii) of this subsection.

(7) "Railroad business" means the business of operating any railroad, by whatever power operated, for public use in the conveyance of persons or property for hire. It shall not, however, include any business herein defined as an urban transportation business.

(8) "Railroad car business" means the business of operating stock cars, furniture cars, refrigerator cars, fruit cars, poultry cars, tank cars, sleeping cars, parlor cars, buffet cars, tourist cars, or any other kinds of cars used for transportation of property or persons upon the line of any railroad operated in this state when such railroad is not owned or leased by the person engaging in such business.

(9) "Telegraph business" means the business of affording telegraphic communication for hire.

(10) "Tugboat business" means the business of operating tugboats, towboats, wharf boats or similar vessels in the towing or pushing of vessels, barges or rafts for hire.

(11) "Urban transportation business" means the business of operating any vehicle for public use in the conveyance of persons or property for hire, insofar as (a) operating entirely within the corporate limits of any city or town, or within five miles of the corporate limits thereof, or (b) operating entirely within and between cities and towns whose corporate limits are not more than five miles apart or within five miles of the corporate limits of either thereof. Included herein, but without limiting the scope hereof, is the business of operating passenger vehicles of every type and also the business of operating cartage, pickup, or delivery services, including in such services the collection and distribution of property arriving from or destined to a point within or without the state, whether or not such collection or distribution be made by the person performing a local or interstate line-haul of such property.

(12) "Water distribution business" means the business of operating a plant or system for the distribution of water for hire or sale.

(13) The meaning attributed, in chapter 82.04 RCW, to the term "tax year," "person," "value proceeding or accruing," "business," "engaging in business," "in this state," "within this state," "cash discount" and "successor" shall apply equally in the provisions of this chapter. [2009 c 535 § 1110; 2007 c 6 § 1023; 1996 c 150 § 1; 1994 c 163 § 4; 1991 c 272 § 14; 1989 c 302 § 203. Prior: 1989 c 302 § 102; 1986 c 226 § 1; 1983 2nd ex.s. c 3 § 32; 1982 2nd ex.s. c 9 § 1; 1981 c 144 § 2; 1965 ex.s. c 173 § 20; 1961 c 293 § 12; 1961 c 15 § 82.16.010; prior: 1959 ex.s. c 3 § 15; 1955 c 389 § 28; 1949 c 228 § 10; 1943 c 156 § 10; 1941 c 178 § 12; 1939 c 225 § 20; 1937 c 227 § 11; 1935 c 180 § 37; Rem. Supp. 1949 § 8370-37.]

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

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Part headings not law—Savings—Effective date—Severability—2007 c 6: See notes following RCW 82.32.020.

Findings—Intent—2007 c 6: See note following RCW 82.14.495.

Effective date—1996 c 150: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 25, 1996]." [1996 c 150 § 3.]

Effective dates—1991 c 272: See RCW 81.108.901.

Finding, purpose—1989 c 302: See note following RCW 82.04.120.

Effective date—1986 c 226: "This act shall take effect July 1, 1986." [1986 c 226 § 3.]

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Effective date—1982 2nd ex.s. c 9: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect August 1, 1982." [1982 2nd ex.s. c 9 § 4.]

Intent—1981 c 144: "The legislature recognizes that there have been significant changes in the nature of the telephone business in recent years.

Once solely the domain of regulated monopolies, the telephone business has now been opened up to competition with respect to most of its services and equipment. As a result of this competition, the state and local excise tax structure in the state of Washington has become discriminatory when applied to regulated telephone company transactions that are similar in nature to those consummated by nonregulated competitors. Telephone companies are forced to operate at a significant state and local tax disadvantage when compared to these nonregulated competitors.

To remedy this situation, it is the intent of the legislature to place telephone companies and nonregulated competitors of telephone companies on an equal excise tax basis with regard to the providing of similar goods and services. Therefore competitive telephone services shall for excise tax purposes only, unless otherwise provided, be treated as retail sales under the applicable state and local business and occupation and sales and use taxes. This shall not affect any requirement that regulated telephone companies have under Title 80 RCW, unless otherwise provided.

Nothing in this act affects the authority and responsibility of the Washington utilities and transportation commission to set fair, just, reasonable, and sufficient rates for telephone service." [1981 c 144 § 1.]

Severability—1981 c 144: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 144 § 12.]

Effective date—1981 c 144: "This act shall take effect on January 1, 1982." [1981 c 144 § 13.]

Effective date—1965 ex.s. c 173: See note following RCW 82.04.050.

82.16.020 Public utility tax imposed—Additional tax imposed—Deposit of moneys. ***(Effective until June 30, 2013.)*** (1) There is levied and there shall be collected from every person a tax for the act or privilege of engaging within this state in any one or more of the businesses herein mentioned. The tax shall be equal to the gross income of the business, multiplied by the rate set out after the business, as follows:

(a) Express, sewerage collection, and telegraph businesses: Three and six-tenths percent;

(b) Light and power business: Three and sixty-two one-hundredths percent;

(c) Gas distribution business: Three and six-tenths percent;

(d) Urban transportation business: Six-tenths of one percent;

(e) Vessels under sixty-five feet in length, except tugboats, operating upon the waters within the state: Six-tenths of one percent;

(f) Motor transportation, railroad, railroad car, and tugboat businesses, and all public service businesses other than ones mentioned above: One and eight-tenths of one percent;

(g) Water distribution business: Four and seven-tenths percent;

(h) Log transportation business: One and twenty-eight one-hundredths percent.

(2) An additional tax is imposed equal to the rate specified in RCW 82.02.030 multiplied by the tax payable under subsection (1) of this section.

(3) Twenty percent of the moneys collected under subsection (1) of this section on water distribution businesses and sixty percent of the moneys collected under subsection (1) of this section on sewerage collection businesses shall be deposited in the public works assistance account created in RCW 43.155.050. [2009 c 469 § 702; 1996 c 150 § 2; 1989 c 302 § 204; 1986 c 282 § 14; 1985 c 471 § 10; 1983 2nd ex.s. c 3 § 13; 1982 2nd ex.s. c 5 § 1; 1982 1st ex.s. c 35 § 5; 1971 ex.s. c 299 § 12; 1967 ex.s. c 149 § 24; 1965 ex.s. c 173 § 21; 1961 c 293 § 13; 1961 c 15 § 82.16.020. Prior: 1959 ex.s. c 3 § 16; 1939 c 225 § 19; 1935 c 180 § 36; RRS § 8370-36.]

Effective date—2009 c 469: See note following RCW 82.08.962.

Expiration date—2009 c 469 §§ 701 and 702: See note following RCW 82.16.010.

Effective date—1996 c 150: See note following RCW 82.16.010.

Finding, purpose—1989 c 302: See note following RCW 82.04.120.

Severability—1986 c 282: See RCW 82.18.900.

Severability—Effective date—1985 c 471: See notes following RCW 82.04.260.

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Effective date—1982 2nd ex.s. c 5: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect August 1, 1982." [1982 2nd ex.s. c 5 § 2.]

Severability—Effective dates—1982 1st ex.s. c 35: See notes following RCW 82.08.020.

Effective dates—Severability—1971 ex.s. c 299: See notes following RCW 82.04.050.

82.16.0421 Exemptions—Sales to electrolytic processing businesses. ***(Expires June 30, 2019.)*** (1) For the purposes of this section:

(a) "Chlor-alkali electrolytic processing business" means a person who is engaged in a business that uses more than ten average megawatts of electricity per month in a chlor-alkali electrolytic process to split the electrochemical bonds of sodium chloride and water to make chlorine and sodium hydroxide. A "chlor-alkali electrolytic processing business" does not include direct service industrial customers or their subsidiaries that contract for the purchase of power from the Bonneville power administration as of June 10, 2004.

(b) "Sodium chlorate electrolytic processing business" means a person who is engaged in a business that uses more than ten average megawatts of electricity per month in a sodium chlorate electrolytic process to split the electrochemical bonds of sodium chloride and water to make sodium chlorate and hydrogen. A "sodium chlorate electrolytic processing business" does not include direct service industrial customers or their subsidiaries that contract for the purchase of power from the Bonneville power administration as of June 10, 2004.

(2) Effective July 1, 2004, the tax levied under this chapter does not apply to sales of electricity made by a light and power business to a chlor-alkali electrolytic processing business or a sodium chlorate electrolytic processing business for the electrolytic process if the contract for sale of electricity to the business contains the following terms:

(a) The electricity to be used in the electrolytic process is separately metered from the electricity used for general operations of the business;

(b) The price charged for the electricity used in the electrolytic process will be reduced by an amount equal to the tax exemption available to the light and power business under this section; and

(c) Disallowance of all or part of the exemption under this section is a breach of contract and the damages to be paid by the chlor-alkali electrolytic processing business or the sodium chlorate electrolytic processing business are the amount of the tax exemption disallowed.

(3) The exemption provided for in this section does not apply to amounts received from the remarketing or resale of electricity originally obtained by contract for the electrolytic process.

(4) In order to claim an exemption under this section, the chlor-alkali electrolytic processing business or the sodium chlorate electrolytic processing business must provide the light and power business with an exemption certificate in a form and manner prescribed by the department.

(5)(a) This section does not apply to sales of electricity made after December 31, 2018.

(b) This section expires June 30, 2019. [2009 c 434 § 1; 2004 c 240 § 1.]

82.16.110 Renewable energy system cost recovery—Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1)(a) "Community solar project" means:

(i) A solar energy system owned by local individuals, households, nonprofit organizations, or nonutility businesses that is placed on the property owned by a cooperating local governmental entity that is not in the light and power business or in the gas distribution business; or

(ii) A utility-owned solar energy system that is voluntarily funded by the utility's ratepayers where, in exchange for their financial support, the utility gives contributors a payment or credit on their utility bill for the value of the electricity produced by the project.

(b) For the purposes of "community solar project" as defined in (a) of this subsection:

(i) "Nonprofit organization" means an organization exempt from taxation under Title 26 U.S.C. Sec. 501(c)(3) of the federal internal revenue code of 1986, as amended, as of January 1, 2009; and

(ii) "Utility" means a light and power business, an electric cooperative, or a mutual corporation that provides electricity service.

(2) "Customer-generated electricity" means a community solar project or the alternating current electricity that is generated from a renewable energy system located on an individual's, businesses', or local government's real property that is also provided electricity generated by a light and power business. Except for community solar projects, a system located on a leasehold interest does not qualify under this definition. "Customer-generated electricity" does not include electricity generated by a light and power business with greater than one thousand megawatt hours of annual sales or a gas distribution business.

(3) "Economic development kilowatt-hour" means the actual kilowatt-hour measurement of customer-generated electricity multiplied by the appropriate economic development factor.

(4) "Local governmental entity" means any unit of local government of this state including, but not limited to, counties, cities, towns, municipal corporations, quasi-municipal corporations, special purpose districts, and school districts.

(5) "Photovoltaic cell" means a device that converts light directly into electricity without moving parts.

(6) "Renewable energy system" means a solar energy system, an anaerobic digester as defined in RCW 82.08.900, or a wind generator used for producing electricity.

(7) "Solar energy system" means any device or combination of devices or elements that rely upon direct sunlight as an energy source for use in the generation of electricity.

(8) "Solar inverter" means the device used to convert direct current to alternating current in a photovoltaic cell system.

(9) "Solar module" means the smallest nondivisible self-contained physical structure housing interconnected photovoltaic cells and providing a single direct current electrical output. [2009 c 469 § 504; 2005 c 300 § 2.]

Effective date—2009 c 469: See note following RCW 82.08.962.

Findings—Intent—2005 c 300: "The legislature finds that the use of renewable energy resources generated from local sources such as solar and wind power benefit our state by reducing the load on the state's electric energy grid, by providing nonpolluting sources of electricity generation, and by the creation of jobs for local industries that develop and sell renewable energy products and technologies.

The legislature finds that Washington state has become a national and international leader in the technologies related to the solar electric markets. The state can support these industries by providing incentives for the purchase of locally made renewable energy products. Locally made renewable technologies benefit and protect the state's environment. The legislature also finds that the state's economy can be enhanced through the creation of incentives to develop additional renewable energy industries in the state.

The legislature intends to provide incentives for the greater use of locally created renewable energy technologies, support and retain existing local industries, and create new opportunities for renewable energy industries to develop in Washington state." [2005 c 300 § 1.]

Effective date—2005 c 300: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2005." [2005 c 300 § 8.]

82.16.120 Renewable energy system cost recovery—Application to light/power business—Certification—Limitations. (1) Any individual, business, local governmental entity, not in the light and power business or in the gas distribution business, or a participant in a community solar project may apply to the light and power business serving the situs of the system, each fiscal year beginning on July 1, 2005, for an investment cost recovery incentive for each kilowatt-hour from a customer-generated electricity renewable energy system. No incentive may be paid for kilowatt-hours generated before July 1, 2005, or after June 30, 2020.

(2)(a) Before submitting for the first time the application for the incentive allowed under subsection (4) of this section, the applicant must submit to the department of revenue and to the climate and rural energy development center at the Washington State University, established under RCW 28B.30.642, a certification in a form and manner prescribed by the department that includes, but is not limited to, the following information:

(i) The name and address of the applicant and location of the renewable energy system;

(ii) The applicant's tax registration number;

(iii) That the electricity produced by the applicant meets the definition of "customer-generated electricity" and that the renewable energy system produces electricity with:

(A) Any solar inverters and solar modules manufactured in Washington state;

(B) A wind generator powered by blades manufactured in Washington state;

(C) A solar inverter manufactured in Washington state;

(D) A solar module manufactured in Washington state; or

(E) Solar or wind equipment manufactured outside of Washington state;

(iv) That the electricity can be transformed or transmitted for entry into or operation in parallel with electricity transmission and distribution systems;

(v) The date that the renewable energy system received its final electrical permit from the applicable local jurisdiction.

(b) Within thirty days of receipt of the certification the department of revenue must notify the applicant by mail, or electronically as provided in RCW 82.32.135, whether the renewable energy system qualifies for an incentive under this section. The department may consult with the climate and rural energy development center to determine eligibility for the incentive. System certifications and the information contained therein are subject to disclosure under RCW 82.32.330(3)(m).

(3)(a) By August 1st of each year application for the incentive shall be made to the light and power business serving the situs of the system by certification in a form and manner prescribed by the department that includes, but is not limited to, the following information:

(i) The name and address of the applicant and location of the renewable energy system;

(ii) The applicant's tax registration number;

(iii) The date of the notification from the department of revenue stating that the renewable energy system is eligible for the incentives under this section;

(iv) A statement of the amount of kilowatt-hours generated by the renewable energy system in the prior fiscal year.

(b) Within sixty days of receipt of the incentive certification the light and power business serving the situs of the system shall notify the applicant in writing whether the incentive payment will be authorized or denied. The business may consult with the climate and rural energy development center to determine eligibility for the incentive payment. Incentive certifications and the information contained therein are subject to disclosure under RCW 82.32.330(3)(m).

(c)(i) Persons receiving incentive payments shall keep and preserve, for a period of five years, suitable records as may be necessary to determine the amount of incentive applied for and received. Such records shall be open for examination at any time upon notice by the light and power business that made the payment or by the department. If upon examination of any records or from other information obtained by the business or department it appears that an incentive has been paid in an amount that exceeds the correct amount of incentive payable, the business may assess against the person for the amount found to have been paid in excess of the correct amount of incentive payable and shall add thereto interest on the amount. Interest shall be assessed in the manner that the department assesses interest upon delinquent tax under RCW 82.32.050.

(ii) If it appears that the amount of incentive paid is less than the correct amount of incentive payable the business may authorize additional payment.

(4) Except for community solar projects, the investment cost recovery incentive may be paid fifteen cents per economic development kilowatt-hour unless requests exceed the amount authorized for credit to the participating light and power business. For community solar projects, the investment cost recovery incentive may be paid thirty cents per economic development kilowatt-hour unless requests exceed the amount authorized for credit to the participating light and power business. For the purposes of this section, the rate paid for the investment cost recovery incentive may be multiplied by the following factors:

(a) For customer-generated electricity produced using solar modules manufactured in Washington state, two and four-tenths;

(b) For customer-generated electricity produced using a solar or a wind generator equipped with an inverter manufactured in Washington state, one and two-tenths;

(c) For customer-generated electricity produced using an anaerobic digester, or by other solar equipment or using a wind generator equipped with blades manufactured in Washington state, one; and

(d) For all other customer-generated electricity produced by wind, eight-tenths.

(5) No individual, household, business, or local governmental entity is eligible for incentives provided under subsection (4) of this section for more than five thousand dollars per year. Each applicant in a community solar project is eligible for up to five thousand dollars per year.

(6) If requests for the investment cost recovery incentive exceed the amount of funds available for credit to the participating light and power business, the incentive payments shall be reduced proportionately.

(7) The climate and rural energy development center at Washington State University energy program may establish guidelines and standards for technologies that are identified as Washington manufactured and therefore most beneficial to the state's environment.

(8) The environmental attributes of the renewable energy system belong to the applicant, and do not transfer to the state or the light and power business upon receipt of the investment cost recovery incentive. [2009 c 469 § 505; 2007 c 111 § 101; 2005 c 300 § 3.]

Effective date—2009 c 469: See note following RCW 82.08.962.

Part headings not law—2007 c 111: "Part headings used in this act are not any part of the law." [2007 c 111 § 401.]

Findings—Intent—Effective date—2005 c 300: See notes following RCW 82.16.110.

82.16.130 Renewable energy system cost recovery—Light/power business tax credit. (1) A light and power business shall be allowed a credit against taxes due under this chapter in an amount equal to investment cost recovery incentive payments made in any fiscal year under RCW 82.16.120. The credit shall be taken in a form and manner as required by the department. The credit under this section for the fiscal year may not exceed one percent of the businesses' taxable power sales due under RCW 82.16.020(1)(b) or one hundred thousand dollars, whichever is greater. Incentive payments to participants in a utility-owned community solar project as defined in RCW 82.16.110(1)(a)(ii) may only account for up to twenty-five percent of the total allowable credit. The credit may not exceed the tax that would otherwise be due under this chapter. Refunds shall not be granted in the place of credits. Expenditures not used to earn a credit

in one fiscal year may not be used to earn a credit in subsequent years.

(2) For any business that has claimed credit for amounts that exceed the correct amount of the incentive payable under RCW 82.16.120, the amount of tax against which credit was claimed for the excess payments shall be immediately due and payable. The department shall assess interest but not penalties on the taxes against which the credit was claimed. Interest shall be assessed at the rate provided for delinquent excise taxes under chapter 82.32 RCW, retroactively to the date the credit was claimed, and shall accrue until the taxes against which the credit was claimed are repaid.

(3) The right to earn tax credits under this section expires June 30, 2020. Credits may not be claimed after June 30, 2021. [2009 c 469 § 506; 2005 c 300 § 4.]

Effective date—2009 c 469: See note following RCW 82.08.962.

Findings—Intent—Effective date—2005 c 300: See notes following RCW 82.16.110.

Chapter 82.24 RCW
TAX ON CIGARETTES

Sections

82.24.020 Tax imposed—Additional taxes for specific purposes—Absorption of tax—Possession defined.
82.24.026 Additional tax imposed—Where deposited.
82.24.027 Additional tax imposed—Rate—Deposited into the general fund.
82.24.028 Additional tax imposed—Rate—Deposited into the general fund.
82.24.510 Wholesaler's and retailer's licenses—Application and issuance—Criminal background check.
82.24.550 Enforcement—Rules—Notice—Hearing—Reinstatement of license—Appeal.

82.24.020 Tax imposed—Additional taxes for specific purposes—Absorption of tax—Possession defined. (1) There is levied and there shall be collected as provided in this chapter, a tax upon the sale, use, consumption, handling, possession, or distribution of all cigarettes, in an amount equal to one and fifteen one-hundredths cents per cigarette.

(2) An additional tax is imposed upon the sale, use, consumption, handling, possession, or distribution of all cigarettes, in an amount equal to five hundred twenty-five one-thousandths of a cent per cigarette. All revenues collected during any month from this additional tax shall be deposited in the state general fund by the twenty-fifth day of the following month.

(3) An additional tax is imposed upon the sale, use, consumption, handling, possession, or distribution of all cigarettes, in an amount equal to two and five one-hundredths cents per cigarette. All revenues collected during any month from this additional tax shall be deposited in the state general fund by the twenty-fifth day of the following month.

(4) Wholesalers subject to the payment of this tax may, if they wish, absorb five one-hundredths cents per cigarette of the tax and not pass it on to purchasers without being in violation of this section or any other act relating to the sale or taxation of cigarettes.

(5) For purposes of this chapter, "possession" shall mean both (a) physical possession by the purchaser and, (b) when cigarettes are being transported to or held for the purchaser or his or her designee by a person other than the purchaser, constructive possession by the purchaser or his or her designee, which constructive possession shall be deemed to occur at the location of the cigarettes being so transported or held.

(6) In accordance with federal law and rules prescribed by the department, an enrolled member of a federally recognized Indian tribe may purchase cigarettes from an Indian tribal organization under the jurisdiction of the member's tribe for the member's own use exempt from the applicable taxes imposed by this chapter. Except as provided in subsection (7) of this section, any person, who purchases cigarettes from an Indian tribal organization and who is not an enrolled member of the federally recognized Indian tribe within whose jurisdiction the sale takes place, is not exempt from the applicable taxes imposed by this chapter.

(7) If the state enters into a cigarette tax contract or agreement with a federally recognized Indian tribe under chapter 43.06 RCW, the terms of the contract or agreement shall take precedence over any conflicting provisions of this chapter while the contract or agreement is in effect. [2009 c 479 § 66. Prior: 2008 c 226 § 3; 2008 c 86 § 301; 2003 c 114 § 1; 1994 sp.s. c 7 § 904 (Referendum Bill No. 43, approved November 8, 1994); 1993 c 492 § 307; 1989 c 271 § 504; 1987 c 80 § 1; 1983 2nd ex.s. c 3 § 15; 1982 1st ex.s. c 35 § 8; 1981 c 172 § 6; 1972 ex.s. c 157 § 3; 1971 ex.s. c 299 § 13; 1965 ex.s. c 173 § 23; 1961 ex.s. c 24 § 3; 1961 c 15 § 82.24.020; prior: 1959 c 270 § 2; prior: 1949 c 228 § 13, part; 1943 c 156 § 11, part; 1941 c 178 § 13, part; 1939 c 225 § 23, part; 1935 c 180 § 82, part; Rem. Supp. 1949 § 8370-82, part.]

Effective date—2009 c 479: See note following RCW 2.56.030.

Finding—Intent—2008 c 226: See note following RCW 82.24.080.

Severability—Savings—Part headings not law—2008 c 86: See notes following RCW 82.14.030.

Contingent partial referendum—1994 sp.s. c 7 §§ 901-909: See note following RCW 66.24.210.

Finding—Intent—Severability—Effective dates—Contingent expiration date—1994 sp.s. c 7: See notes following RCW 43.70.540.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

Effective dates—1989 c 271: See note following RCW 66.28.200.

Severability—1989 c 271: See note following RCW 9.94A.510.

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Severability—Effective dates—1982 1st ex.s. c 35: See notes following RCW 82.08.020.

Effective dates—1981 c 172: See note following RCW 82.04.240.

Severability—1972 ex.s. c 157: "If any provision of this 1972 amendatory act, or its application to any person or circumstance is held invalid, the remainder of this 1972 amendatory act, or the application of the provision to other persons or circumstances is not affected." [1972 ex.s. c 157 § 8.]

82.24.026 Additional tax imposed—Where deposited. (1) In addition to the tax imposed upon the sale, use, consumption, handling, possession, or distribution of cigarettes set forth in RCW 82.24.020, there is imposed a tax in an amount equal to three cents per cigarette.

(2) The revenue collected under this section shall be deposited as follows:

(a) 28.5 percent shall be deposited into the general fund.

(b) The remainder shall be deposited into the education legacy trust account. [2009 c 479 § 67; 2008 c 86 § 302; 2005 c 514 § 1102.]

Effective date—2009 c 479: See note following RCW 2.56.030.

Severability—Savings—Part headings not law—2008 c 86: See notes following RCW 82.14.030.

Effective date—2005 c 514: See note following RCW 83.100.230.

Part headings not law—Severability—2005 c 514: See notes following RCW 82.12.808.

82.24.027 Additional tax imposed—Rate—Deposited into the general fund. (1) There is hereby levied and there shall be collected by the department of revenue from the persons mentioned in and in the manner provided by this chapter, an additional tax upon the sale, use, consumption, handling, possession, or distribution of cigarettes in an amount equal to four-tenths of a cent per cigarette.

(2) The moneys collected under this section shall be deposited in the general fund. [2009 c 479 § 68; 2008 c 86 § 303; 1999 c 309 § 925; 1986 c 3 § 12.]

Effective date—2009 c 479: See note following RCW 2.56.030.

Severability—Savings—Part headings not law—2008 c 86: See notes following RCW 82.14.030.

Severability—Effective date—1999 c 309: See notes following RCW 41.06.152.

Effective dates—1986 c 3: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately except sections 12 through 15 of this act shall take effect April 1, 1986." [1986 c 3 § 18.]

Severability—1986 c 3: See RCW 70.146.900.

82.24.028 Additional tax imposed—Rate—Deposited into the general fund. In addition to the tax imposed upon the sale, use, consumption, handling, possession, or distribution of cigarettes set forth in RCW 82.24.020, there is imposed a tax in an amount equal to three cents per cigarette. All revenues collected during any month from this additional tax shall be deposited in the state general fund by the twenty-fifth day of the following month. [2009 c 479 § 69; 2008 c 86 § 304; 2002 c 2 § 3 (Initiative Measure No. 773, approved November 6, 2001).]

Effective date—2009 c 479: See note following RCW 2.56.030.

Severability—Savings—Part headings not law—2008 c 86: See notes following RCW 82.14.030.

Intent—2002 c 2 (Initiative Measure No. 773): See RCW 70.47.002.

82.24.510 Wholesaler's and retailer's licenses—Application and issuance—Criminal background check. (1) The licenses issuable under this chapter are as follows:

(a) A wholesaler's license.

(b) A retailer's license.

(2) Application for the licenses shall be made through the master license system under chapter 19.02 RCW. The board shall adopt rules regarding the regulation of the licenses. The board may refrain from the issuance of any license under this chapter if the board has reasonable cause to believe that the applicant has wilfully withheld information requested for the purpose of determining the eligibility of the applicant to receive a license, or if the board has reasonable cause to believe that information submitted in the application is false or misleading or is not made in good faith. In addition, for the purpose of reviewing an application for a wholesaler's license or retailer's license and for considering the denial, suspension, or revocation of any such license, the board may consider any prior criminal conduct of the applicant, including an administrative violation history record with the board and a criminal history record information check within the previous five years, in any state, tribal, or federal jurisdiction in the United States, its territories, or possessions, and the provisions of RCW 9.95.240 and chapter 9.96A RCW shall not apply to such cases. The board may, in its discretion, grant or refuse the wholesaler's license or retailer's license, subject to the provisions of RCW 82.24.550.

(3) No person may qualify for a wholesaler's license or a retailer's license under this section without first undergoing a criminal background check. The background check shall be performed by the board and must disclose any criminal conduct within the previous five years in any state, tribal, or federal jurisdiction in the United States, its territories, or possessions. A person who possesses a valid license on July 22, 2001, is subject to this subsection and subsection (2) of this section beginning on the date of the person's master license expiration, and thereafter. If the applicant or licensee also has a license issued under chapter 66.24 or 82.26 RCW, the background check done under the authority of chapter 66.24 or 82.26 RCW satisfies the requirements of this section.

(4) Each such license shall expire on the master license expiration date, and each such license shall be continued annually if the licensee has paid the required fee and complied with all the provisions of this chapter and the rules of the board made pursuant thereto.

(5) Each license and any other evidence of the license that the board requires must be exhibited in each place of business for which it is issued and in the manner required for the display of a master license. [2009 c 154 § 1; 2001 c 235 § 8; 1986 c 321 § 5.]

Intent—Finding—2001 c 235: See RCW 43.06.450.

Policy—Intent—Savings—Effective date—1986 c 321: See notes following RCW 82.24.500.

82.24.550 Enforcement—Rules—Notice—Hearing—Reinstatement of license—Appeal. (1) The board shall enforce the provisions of this chapter. The board may adopt, amend, and repeal rules necessary to enforce and administer the provisions of this chapter.

(2) The department may adopt, amend, and repeal rules necessary to administer the provisions of this chapter. The board may revoke or suspend the license or permit of any wholesale or retail cigarette dealer in the state upon sufficient cause appearing of the violation of this chapter or upon the failure of such licensee to comply with any of the provisions of this chapter.

(3) A license shall not be suspended or revoked except upon notice to the licensee and after a hearing as prescribed by the board. The board, upon finding that the licensee has failed to comply with any provision of this chapter or any rule adopted under this chapter, shall, in the case of the first offense, suspend the license or licenses of the licensee for a period of not less than thirty consecutive business days, and, in the case of a second or further offense, shall suspend the

license or licenses for a period of not less than ninety consecutive business days nor more than twelve months, and, in the event the board finds the licensee has been guilty of willful and persistent violations, it may revoke the license or licenses.

(4) Any licenses issued under chapter 82.26 RCW to a person whose license or licenses have been suspended or revoked under this section shall also be suspended or revoked during the period of suspension or revocation under this section.

(5) Any person whose license or licenses have been revoked under this section may reapply to the board at the expiration of one year from the date of revocation of the license or licenses. The license or licenses may be approved by the board if it appears to the satisfaction of the board that the licensee will comply with the provisions of this chapter and the rules adopted under this chapter.

(6) A person whose license has been suspended or revoked shall not sell cigarettes or tobacco products or permit cigarettes or tobacco products to be sold during the period of such suspension or revocation on the premises occupied by the person or upon other premises controlled by the person or others or in any other manner or form whatever.

(7) Any determination and order by the board, and any order of suspension or revocation by the board of the license or licenses issued under this chapter, or refusal to reinstate a license or licenses after revocation shall be reviewable by an appeal to the superior court of Thurston county. The superior court shall review the order or ruling of the board and may hear the matter de novo, having due regard to the provisions of this chapter and the duties imposed upon the board.

(8) If the board makes an initial decision to deny a license or renewal, or suspend or revoke a license, the applicant may request a hearing subject to the applicable provisions under Title 34 RCW.

(9) For purposes of this section, "tobacco products" has the same meaning as in RCW 82.26.010. [2009 c 154 § 2; 2005 c 180 § 19; 1997 c 420 § 8; 1993 c 507 § 17; 1986 c 321 § 9.]

Effective date—2005 c 180: See note following RCW 82.26.105.

Finding—Severability—1993 c 507: See RCW 70.155.005 and 70.155.900.

Policy—Intent—Savings—Effective date—1986 c 321: See notes following RCW 82.24.500.

Chapter 82.26 RCW
TAX ON TOBACCO PRODUCTS

Sections

82.26.020 Tax imposed—Deposited into the general fund.
82.26.060 Books and records to be preserved—Entry and inspection by department or board.
82.26.150 Distributor's license, retailer's license—Application—Approval—Display.
82.26.180 Board web site listing distributors and retailers.
82.26.190 Distributors and retailers—Valid license required—Violations—Penalties.
82.26.210 Manufacturer's representatives—Requirements.
82.26.220 Enforcement, administration of chapter—License suspension, revocation.

82.26.020 Tax imposed—Deposited into the general fund. (1) There is levied and there shall be collected a tax upon the sale, handling, or distribution of all tobacco products in this state at the following rate:

(a) Seventy-five percent of the taxable sales price of cigars, not to exceed fifty cents per cigar; or

(b) Seventy-five percent of the taxable sales price of all tobacco products that are not cigars.

(2) Taxes under this section shall be imposed at the time the distributor (a) brings, or causes to be brought, into this state from without the state tobacco products for sale, (b) makes, manufactures, fabricates, or stores tobacco products in this state for sale in this state, (c) ships or transports tobacco products to retailers in this state, to be sold by those retailers, or (d) handles for sale any tobacco products that are within this state but upon which tax has not been imposed.

(3) The moneys collected under this section shall be deposited into the state general fund. [2009 c 479 § 70; 2005 c 180 § 3; 2002 c 325 § 2; 1993 c 492 § 309; 1983 2nd ex.s. c 3 § 16; 1982 1st ex.s. c 35 § 9; 1975 1st ex.s. c 278 § 71; 1971 ex.s. c 299 § 77; 1965 ex.s. c 173 § 25; 1961 c 15 § 82.26.020. Prior: 1959 ex.s. c 5 § 12.]

Effective date—2009 c 479: See note following RCW 2.56.030.

Effective date—2005 c 180: See note following RCW 82.26.105.

Effective date—2002 c 325: See note following RCW 82.26.010.

Finding—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Severability—Effective dates—1982 1st ex.s. c 35: See notes following RCW 82.08.020.

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

Effective dates—Severability—1971 ex.s. c 299: See notes following RCW 82.04.050.

82.26.060 Books and records to be preserved—Entry and inspection by department or board. (1) Every distributor shall keep at each place of business complete and accurate records for that place of business, including itemized invoices, of tobacco products held, purchased, manufactured, brought in or caused to be brought in from without the state, or shipped or transported to retailers in this state, and of all sales of tobacco products made.

(2) These records shall show the names and addresses of purchasers, the inventory of all tobacco products, and other pertinent papers and documents relating to the purchase, sale, or disposition of tobacco products. All invoices and other records required by this section to be kept shall be preserved for a period of five years from the date of the invoices or other documents or the date of the entries appearing in the records.

(3) At any time during usual business hours the department, board, or its duly authorized agents or employees, may enter any place of business of a distributor, without a search warrant, and inspect the premises, the records required to be kept under this chapter, and the tobacco products contained therein, to determine whether or not all the provisions of this chapter are being fully complied with. If the department, board, or any of its agents or employees, are denied free access or are hindered or interfered with in making such

examination, the registration certificate issued under RCW 82.32.030 of the distributor at such premises shall be subject to revocation, and any licenses issued under this chapter or chapter 82.24 RCW are subject to suspension or revocation, by the department or board. [2009 c 154 § 3; 2005 c 180 § 4; 1975 1st ex.s. c 278 § 73; 1961 c 15 § 82.26.060. Prior: 1959 ex.s. c 5 § 16.]

Effective date—2005 c 180: See note following RCW 82.26.105.

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

82.26.150 Distributor's license, retailer's license—Application—Approval—Display. (1) The licenses issuable by the board under this chapter are as follows:

(a) A distributor's license; and

(b) A retailer's license.

(2) Application for the licenses shall be made through the master license system under chapter 19.02 RCW. The board may adopt rules regarding the regulation of the licenses. The board may refuse to issue any license under this chapter if the board has reasonable cause to believe that the applicant has willfully withheld information requested for the purpose of determining the eligibility of the applicant to receive a license, or if the board has reasonable cause to believe that information submitted in the application is false or misleading or is not made in good faith. In addition, for the purpose of reviewing an application for a distributor's license or retailer's license and for considering the denial, suspension, or revocation of any such license, the board may consider criminal conduct of the applicant, including an administrative violation history record with the board and a criminal history record information check within the previous five years, in any state, tribal, or federal jurisdiction in the United States, its territories, or possessions, and the provisions of RCW 9.95.240 and chapter 9.96A RCW shall not apply to such cases. The board may, in its discretion, issue or refuse to issue the distributor's license or retailer's license, subject to the provisions of RCW 82.26.220.

(3) No person may qualify for a distributor's license or a retailer's license under this section without first undergoing a criminal background check. The background check shall be performed by the board and must disclose any criminal conduct within the previous five years in any state, tribal, or federal jurisdiction in the United States, its territories, or possessions. If the applicant or licensee also has a license issued under chapter 66.24 or 82.24 RCW, the background check done under the authority of chapter 66.24 or 82.24 RCW satisfies the requirements of this section.

(4) Each license issued under this chapter shall expire on the master license expiration date. The license shall be continued annually if the licensee has paid the required fee and complied with all the provisions of this chapter and the rules of the board adopted pursuant to this chapter.

(5) Each license and any other evidence of the license required under this chapter must be exhibited in each place of business for which it is issued and in the manner required for the display of a master license. [2009 c 154 § 4; 2005 c 180 § 11.]

Effective date—2005 c 180: See note following RCW 82.26.105.

82.26.180 Board web site listing distributors and retailers. The board shall compile and maintain a current record of the names of all distributors and retailers licensed under this chapter and the status of their license or licenses. The information must be updated on a monthly basis and published on the board's official internet web site. This information is not subject to the confidentiality provisions of RCW 82.32.330 and shall be disclosed to manufacturers, distributors, retailers, and the general public upon request. [2009 c 154 § 5; 2005 c 180 § 15.]

Effective date—2005 c 180: See note following RCW 82.26.105.

82.26.190 Distributors and retailers—Valid license required—Violations—Penalties. (1)(a) No person may engage in or conduct business as a distributor or retailer in this state after September 30, 2005, without a valid license issued under this chapter. Any person who sells tobacco products to persons other than ultimate consumers or who meets the definition of distributor under RCW 82.26.010(3)(d) must obtain a distributor's license under this chapter. Any person who sells tobacco products to ultimate consumers must obtain a retailer's license under this chapter.

(b) A violation of this subsection (1) is punishable as a class C felony according to chapter 9A.20 RCW.

(2)(a) No person engaged in or conducting business as a distributor or retailer in this state may:

(i) Refuse to allow the department or the board, on demand, to make a full inspection of any place of business where any of the tobacco products taxed under this chapter are sold, stored, or handled, or otherwise hinder or prevent such inspection;

(ii) Make, use, or present or exhibit to the department or the board any invoice for any of the tobacco products taxed under this chapter that bears an untrue date or falsely states the nature or quantity of the goods invoiced; or

(iii) Fail to produce on demand of the department or the board all invoices of all the tobacco products taxed under this chapter within five years prior to such demand unless the person can show by satisfactory proof that the nonproduction of the invoices was due to causes beyond the person's control.

(b) No person, other than a licensed distributor or retailer, may transport tobacco products for sale in this state for which the taxes imposed under this chapter have not been paid unless:

(i) Notice of the transportation has been given as required under RCW 82.26.140;

(ii) The person transporting the tobacco products actually possesses invoices or delivery tickets showing the true name and address of the consignor or seller, the true name and address of the consignee or purchaser, and the quantity and brands of tobacco products being transported; and

(iii) The tobacco products are consigned to or purchased by a person in this state who is licensed under this chapter.

(c) A violation of this subsection (2) is a gross misdemeanor.

(3) Any person licensed under this chapter as a distributor, and any person licensed under this chapter as a retailer, shall not operate in any other capacity unless the additional appropriate license is first secured. A violation of this subsection (3) is a misdemeanor.

(4) The penalties provided in this section are in addition to any other penalties provided by law for violating the provisions of this chapter or the rules adopted under this chapter. [2009 c 154 § 6; 2005 c 180 § 16.]

Effective date—2005 c 180: See note following RCW 82.26.105.

82.26.210 Manufacturer's representatives—Requirements. A manufacturer that has manufacturer's representatives who sell or distribute the manufacturer's tobacco products in this state must provide the board a list of the names and addresses of all such representatives and must ensure that the list provided to the board is kept current. A manufacturer's representative is not authorized to distribute or sell tobacco products in this state unless the manufacturer that hired the representative has a valid distributor's license under this chapter and that manufacturer provides the board a current list of all of its manufacturer's representatives as required by this section. A manufacturer's representative must carry a copy of the distributor's license of the manufacturer that hired the representative at all times when selling or distributing the manufacturer's tobacco products. [2009 c 154 § 7; 2005 c 180 § 14.]

Effective date—2005 c 180: See note following RCW 82.26.105.

82.26.220 Enforcement, administration of chapter—License suspension, revocation. (1) The board shall enforce this chapter. The board may adopt, amend, and repeal rules necessary to enforce and administer this chapter.

(2) The department may adopt, amend, and repeal rules necessary to administer this chapter. The board may revoke or suspend the distributor's or retailer's license of any distributor or retailer of tobacco products in the state upon sufficient cause showing a violation of this chapter or upon the failure of the licensee to comply with any of the rules adopted under it.

(3) A license shall not be suspended or revoked except upon notice to the licensee and after a hearing as prescribed by the board. The board, upon finding that the licensee has failed to comply with any provision of this chapter or of any rule adopted under it, shall, in the case of the first offense, suspend the license or licenses of the licensee for a period of not less than thirty consecutive business days, and in the case of a second or further offense, suspend the license or licenses for a period of not less than ninety consecutive business days but not more than twelve months, and in the event the board finds the licensee has been guilty of willful and persistent violations, it may revoke the license or licenses.

(4) Any licenses issued under chapter 82.24 RCW to a person whose license or licenses have been suspended or revoked under this section shall also be suspended or revoked during the period of suspension or revocation under this section.

(5) Any person whose license or licenses have been revoked under this section may reapply to the board at the expiration of one year of the license or licenses. The license or licenses may be approved by the board if it appears to the satisfaction of the board that the licensee will comply with the provisions of this chapter and the rules adopted under it.

(6) A person whose license has been suspended or revoked shall not sell tobacco products or cigarettes or permit tobacco products or cigarettes to be sold during the period of suspension or revocation on the premises occupied by the person or upon other premises controlled by the person or others or in any other manner or form.

(7) Any determination and order by the board, and any order of suspension or revocation by the board of the license or licenses issued under this chapter, or refusal to reinstate a license or licenses after revocation is reviewable by an appeal to the superior court of Thurston county. The superior court shall review the order or ruling of the board and may hear the matter de novo, having due regard to the provisions of this chapter and the duties imposed upon the board.

(8) If the board makes an initial decision to deny a license or renewal, or suspend or revoke a license, the applicant may request a hearing subject to the applicable provisions under Title 34 RCW. [2009 c 154 § 8; 2005 c 180 § 18.]

Effective date—2005 c 180: See note following RCW 82.26.105.

Chapter 82.29A RCW
LEASEHOLD EXCISE TAX

Sections

82.29A.125 Exemptions—Electric vehicle infrastructure. *(Expires January 1, 2020.)*

82.29A.125 Exemptions—Electric vehicle infrastructure. ***(Expires January 1, 2020.)*** (1) Leasehold excise tax may not be imposed on leases to tenants of public lands for purposes of installing, maintaining, and operating electric vehicle infrastructure.

(2) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Battery charging station" means an electrical component assembly or cluster of component assemblies designed specifically to charge batteries within electric vehicles, which meet or exceed any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

(b) "Battery exchange station" means a fully automated facility that will enable an electric vehicle with a swappable battery to enter a drive lane and exchange the depleted battery with a fully charged battery through a fully automated process, which meets or exceeds any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

(c) "Electric vehicle infrastructure" means structures, machinery, and equipment necessary and integral to support an electric vehicle, including battery charging stations, rapid charging stations, and battery exchange stations.

(d) "Rapid charging station" means an industrial grade electrical outlet that allows for faster recharging of electric vehicle batteries through higher power levels, which meets or exceeds any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

(3) This section expires January 1, 2020. [2009 c 459 § 3.]

Finding—Purpose—2009 c 459: See note following RCW 47.80.090.

Regional transportation planning organizations—Electric vehicle infrastructure: RCW 47.80.090.

Chapter 82.32 RCW
GENERAL ADMINISTRATIVE PROVISIONS

Sections

82.32.020 Definitions.
82.32.023 Definition of product for agreement purposes.
82.32.060 Excess payment of tax, penalty, or interest—Credit or refund—Payment of judgments for refund.
82.32.080 Payment by check—Electronic funds transfer—Rules—Mailing returns or remittances—Time extension—Deposits—Time extension during state of emergency—Records—Payment must accompany return.
82.32.085 Electronic funds transfer—Generally.
82.32.087 Direct pay permits. *(Effective until January 1, 2010.)*
82.32.087 Direct pay permits. *(Effective January 1, 2010.)*
82.32.115 Records in possession of a third party—Subpoenas.
82.32.135 Notice, assessment, other information—Electronic delivery.
82.32.235 Notice and order to withhold and deliver property due or owned by taxpayer—Bond—Judgment by default.
82.32.290 Unlawful acts—Penalties. *(Effective January 1, 2010.)*
82.32.291 Resale or exemption certificate, unlawful use—Penalty—Rules *(as amended by 2009 c 289)*.
82.32.291 Seller's permit or exemption certificate, unlawful use—Penalty—Rules *(as amended by 2009 c 563)*. *(Effective January 1, 2010.)*
82.32.330 Disclosure of return or tax information. *(Effective until January 1, 2010.)*
82.32.330 Disclosure of return or tax information. *(Effective January 1, 2010.)*
82.32.390 Repealed.
82.32.532 Digital products—Nexus.
82.32.533 Digital products—Amnesty.
82.32.560 Electrolytic processing business tax exemption—Annual report.
82.32.590 Annual surveys or reports for tax incentives—Failure to file.
82.32.600 Annual surveys or reports for tax incentives—Electronic filing.
82.32.632 Annual report for tax incentives for printing or publishing newspapers.
82.32.730 Sourcing—Streamlined sales and use tax agreement.
82.32.765 Local revitalization financing—Reporting requirements.
82.32.770 Sourcing compliance—Tax payer relief—Collection and remittance errors.
82.32.780 Seller's permit—Taxpayer application. *(Effective January 1, 2010.)*
82.32.783 Seller's permit—Contractor application. *(Effective January 1, 2010.)*
82.32.785 Seller's permit—Voluntary electronic verification. *(Effective January 1, 2010.)*
82.32.787 Seller's permit—Request for copies. *(Effective January 1, 2010.)*

82.32.020 Definitions. For the purposes of this chapter:

(1) The meaning attributed in chapters 82.01 through 82.27 RCW to the words and phrases "tax year," "taxable year," "person," "company," "gross proceeds of sales," "gross income of the business," "business," "engaging in business," "successor," "gross operating revenue," "gross income," "taxpayer," "retail sale," "seller," "buyer," "purchaser," "extended warranty," and "value of products" shall apply equally to the provisions of this chapter.

(2) Whenever "property" or "personal property" is used, those terms must be construed to include digital goods and digital codes unless: (a) It is clear from the context that the term "personal property" is intended only to refer to tangible personal property; (b) it is clear from the context that the term "property" is intended only to refer to tangible personal property, real property, or both; or (c) to construe the term "property" or "personal property" as including digital goods and digital codes would yield unlikely, absurd, or strained consequences.

(3) The definitions in this subsection apply throughout this chapter, unless the context clearly requires otherwise.

(a) "Agreement" means the streamlined sales and use tax agreement.

(b) "Associate member" means a petitioning state that is found to be in compliance with the agreement and changes to its laws, rules, or other authorities necessary to bring it into compliance are not in effect, but are scheduled to take effect on or before January 1, 2008. The petitioning states, by majority vote, may also grant associate member status to a petitioning state that does not receive an affirmative vote of three-fourths of the petitioning states upon a finding that the state has achieved substantial compliance with the terms of the agreement as a whole, but not necessarily each required provision, measured qualitatively, and there is a reasonable expectation that the state will achieve compliance by January 1, 2008.

(c) "Certified automated system" means software certified under the agreement to calculate the tax imposed by each jurisdiction on a transaction, determine the amount of tax to remit to the appropriate state, and maintain a record of the transaction.

(d) "Certified service provider" means an agent certified under the agreement to perform all of the seller's sales and use tax functions, other than the seller's obligation to remit tax on its own purchases.

(e)(i) "Member state" means a state that:

(A) Has petitioned for membership in the agreement and submitted a certificate of compliance; and

(B) Before the effective date of the agreement, has been found to be in compliance with the requirements of the agreement by an affirmative vote of three-fourths of the other petitioning states; or

(C) After the effective date of the agreement, has been found to be in compliance with the agreement by a three-fourths vote of the entire governing board of the agreement.

(ii) Membership by reason of (e)(i)(A) and (B) of this subsection is effective on the first day of a calendar quarter at least sixty days after at least ten states comprising at least twenty percent of the total population, as determined by the 2000 federal census, of all states imposing a state sales tax have petitioned for membership and have either been found in compliance with the agreement or have been found to be an associate member under section 704 of the agreement.

(iii) Membership by reason of (e)(i)(A) and (C) of this subsection is effective on the state's proposed date of entry or the first day of the calendar quarter after its petition is approved by the governing board, whichever is later, and is at least sixty days after its petition is approved.

(f) "Model 1 seller" means a seller that has selected a certified service provider as its agent to perform all the seller's sales and use tax functions, other than the seller's obligation to remit tax on its own purchases.

(g) "Model 2 seller" means a seller that has selected a certified automated system to perform part of its sales and use tax functions, but retains responsibility for remitting the tax.

(h) "Model 3 seller" means a seller that has sales in at least five member states, has total annual sales revenue of at least five hundred million dollars, has a proprietary system that calculates the amount of tax due each jurisdiction, and has entered into a performance agreement with the member states that establishes a tax performance standard for the

seller. As used in this subsection (3)(h), a seller includes an affiliated group of sellers using the same proprietary system.

(i) "Source" means the location in which the sale or use of tangible personal property, a digital good or digital code, an extended warranty, or a digital automated service or other service, subject to tax under chapter 82.08, 82.12, 82.14, or 82.14B RCW, is deemed to occur. [2009 c 535 § 1111; 2007 c 6 § 101; 2003 1st sp.s. c 13 § 16; 1983 c 3 § 220; 1961 c 15 § 82.32.020. Prior: 1935 c 180 § 186; RRS § 8370-186.]

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Part headings not law—2007 c 6: "Part headings used in this act are not any part of the law." [2007 c 6 § 1702.]

Savings—2007 c 6: "This act does not affect any existing right acquired or liability or obligation incurred under the sections amended or repealed in this act or under any rule or order adopted under those sections, nor does it affect any proceeding instituted under those sections." [2007 c 6 § 1703.]

Effective date—2007 c 6: "Sections 101 through 105, 201, 202, 401, 501 through 503, 601, 701 through 703, 801, 802, 901 through 905, 1001, 1002, 1004, 1005, 1007 through 1013, 1015 through 1017, 1019 through 1024, 1101 through 1104, 1201 through 1203, 1302, 1401 through 1403, 1501, 1502, and 1601 of this act take effect July 1, 2008." [2007 c 6 § 1704.]

Severability—2007 c 6: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2007 c 6 § 1708.]

Findings—Intent—2007 c 6: See note following RCW 82.14.495.

Effective dates—2003 1st sp.s. c 13: See note following RCW 63.29.020.

82.32.023 Definition of product for agreement purposes. For purposes of construing those provisions of the streamlined sales and use tax agreement that have been incorporated into this title, and unless the context requires otherwise, the terms "product" and "products" refer to tangible personal property, digital goods, digital codes, digital automated services, other services, extended warranties, and anything else that can be sold or used. [2009 c 535 § 1112; 2007 c 6 § 104.]

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Part headings not law—Savings—Effective date—Severability—2007 c 6: See notes following RCW 82.32.020.

Findings—Intent—2007 c 6: See note following RCW 82.14.495.

82.32.060 Excess payment of tax, penalty, or interest—Credit or refund—Payment of judgments for refund. (1) If, upon receipt of an application by a taxpayer for a refund or for an audit of the taxpayer's records, or upon an examination of the returns or records of any taxpayer, it is determined by the department that within the statutory period for assessment of taxes, penalties, or interest prescribed by RCW 82.32.050 any amount of tax, penalty, or interest has been paid in excess of that properly due, the excess amount paid within, or attributable to, such period must be credited to the taxpayer's account or must be refunded to the taxpayer, at the taxpayer's option. Except as provided in subsection (2) of this section, no refund or credit may be made for taxes, penalties, or interest paid more than four years prior to the beginning of the calendar year in which the refund application is made or examination of records is completed.

(2)(a) The execution of a written waiver under RCW 82.32.050 or 82.32.100 will extend the time for making a refund or credit of any taxes paid during, or attributable to, the years covered by the waiver if, prior to the expiration of the waiver period, an application for refund of such taxes is made by the taxpayer or the department discovers a refund or credit is due.

(b) A refund or credit must be allowed for an excess payment resulting from the failure to claim a bad debt deduction, credit, or refund under RCW 82.04.4284, 82.08.037, 82.12.037, 82.14B.150, or 82.16.050(5) for debts that became bad debts under 26 U.S.C. Sec. 166, as amended or renumbered as of January 1, 2003, less than four years prior to the beginning of the calendar year in which the refund application is made or examination of records is completed.

(3) Any such refunds must be made by means of vouchers approved by the department and by the issuance of state warrants drawn upon and payable from such funds as the legislature may provide. However, taxpayers who are required to pay taxes by electronic funds transfer under RCW 82.32.080 must have any refunds paid by electronic funds transfer if the department has the necessary account information to facilitate a refund by electronic funds transfer.

(4) Any judgment for which a recovery is granted by any court of competent jurisdiction, not appealed from, for tax, penalties, and interest which were paid by the taxpayer, and costs, in a suit by any taxpayer must be paid in the same manner, as provided in subsection (3) of this section, upon the filing with the department of a certified copy of the order or judgment of the court.

(a) Interest at the rate of three percent per annum must be allowed by the department and by any court on the amount of any refund, credit, or other recovery allowed to a taxpayer for taxes, penalties, or interest paid by the taxpayer before January 1, 1992. This rate of interest applies for all interest allowed through December 31, 1998. Interest allowed after December 31, 1998, must be computed at the rate as computed under RCW 82.32.050(2). The rate so computed must be adjusted on the first day of January of each year for use in computing interest for that calendar year.

(b) For refunds or credits of amounts paid or other recovery allowed to a taxpayer after December 31, 1991, the rate of interest must be the rate as computed for assessments under RCW 82.32.050(2) less one percent. This rate of interest applies for all interest allowed through December 31, 1998. Interest allowed after December 31, 1998, must be computed at the rate as computed under RCW 82.32.050(2). The rate so computed must be adjusted on the first day of January of each year for use in computing interest for that calendar year.

(5) Interest allowed on a credit notice or refund issued after December 31, 2003, must be computed as follows:

(a) If all overpayments for each calendar year and all reporting periods ending with the final month included in a notice or refund were made on or before the due date of the final return for each calendar year or the final reporting period included in the notice or refund:

(i) Interest must be computed from January 31st following each calendar year included in a notice or refund; or

(ii) Interest must be computed from the last day of the month following the final month included in a notice or refund.

(b) If the taxpayer has not made all overpayments for each calendar year and all reporting periods ending with the final month included in a notice or refund on or before the dates specified by RCW 82.32.045 for the final return for each calendar year or the final month included in the notice or refund, interest must be computed from the last day of the month following the date on which payment in full of the liabilities was made for each calendar year included in a notice or refund, and the last day of the month following the date on which payment in full of the liabilities was made if the final month included in a notice or refund is not the end of a calendar year.

(c) Interest included in a credit notice must accrue up to the date the taxpayer could reasonably be expected to use the credit notice, as defined by the department's rules. If a credit notice is converted to a refund, interest must be recomputed to the date the refund is issued, but not to exceed the amount of interest that would have been allowed with the credit notice. [2009 c 176 § 4; 2004 c 153 § 306; 2003 c 73 § 2; 1999 c 358 § 13; 1997 c 157 § 2; 1992 c 169 § 2; 1991 c 142 § 10; 1990 c 69 § 1; 1989 c 378 § 20; 1979 ex.s. c 95 § 4; 1971 ex.s. c 299 § 17; 1965 ex.s. c 173 § 27; 1963 c 22 § 1; 1961 c 15 § 82.32.060. Prior: 1951 1st ex.s. c 9 § 6; 1949 c 228 § 21; 1935 c 180 § 189; Rem. Supp. 1949 § 8370-189.]

Retroactive effective date—Effective date—2004 c 153: See note following RCW 82.08.0293.

Effective date—2003 c 73 § 2: "Section 2 of this act takes effect January 1, 2004." [2003 c 73 § 3.]

Effective date—1999 c 358 §§ 1 and 3-21: See note following RCW 82.04.3651.

Effective date—Applicability—1992 c 169: See note following RCW 82.32.050.

Effective date—1991 c 142 §§ 9-11: See note following RCW 82.32.050.

Severability—1991 c 142: See RCW 82.32A.900.

Effective date—1990 c 69: "This act shall take effect January 1, 1991." [1990 c 69 § 5.]

Severability—1990 c 69: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1990 c 69 § 4.]

Effective dates—Severability—1971 ex.s. c 299: See notes following RCW 82.04.050.

82.32.080 Payment by check—Electronic funds transfer—Rules—Mailing returns or remittances—Time extension—Deposits—Time extension during state of emergency—Records—Payment must accompany return. (1) When authorized by the department, payment of the tax may be made by uncertified check under such rules as the department prescribes, but, if a check so received is not paid by the bank on which it is drawn, the taxpayer, by whom such check is tendered, will remain liable for payment of the tax and for all legal penalties, the same as if such check had not been tendered.

(2)(a) Except as otherwise provided in this subsection, payment of the tax must be made by electronic funds transfer, as defined in RCW 82.32.085, if the taxpayer is required to file and remit its taxes on a monthly basis. As an alternative to electronic funds transfer, the department may authorize other forms of electronic payment, such as credit card and e-check. All taxes administered by this chapter are subject to this requirement except the taxes authorized by chapters 82.14A, 82.14B, 82.24, 82.27, 82.29A, and 84.33 RCW. It is the intent of this subsection to require electronic payment for those taxes reported on the department's combined excise tax return or any successor return. The mandatory electronic payment requirement in this subsection also applies to taxpayers who meet the threshold for filing and remitting taxes on a monthly basis as established by rule of the department but for whom the department has authorized a less frequent reporting frequency, when such authorization became effective on or after July 26, 2009.

(b) The department, for good cause, may waive the electronic payment requirement in this subsection for any taxpayer. In the discretion of the department, a waiver under this subsection may be made temporary or permanent, and may be made on the department's own motion.

(c) The department is authorized to accept payment of taxes by electronic funds transfer or other acceptable forms of electronic payment from taxpayers that are not subject to the mandatory electronic payment requirements in this subsection.

(3)(a) Except as otherwise provided in this subsection, returns must be filed electronically using the department's online tax filing service, if the taxpayer is required to file and remit its taxes on a monthly basis. The mandatory electronic filing requirement in this subsection also applies to taxpayers who meet the threshold for filing and remitting taxes on a monthly basis as established by rule of the department but for whom the department has authorized a less frequent reporting frequency, when such authorization became effective on or after July 26, 2009.

(b) The department, for good cause, may waive the electronic filing requirement in this subsection for any taxpayer. In the discretion of the department, a waiver under this subsection may be made temporary or permanent, and may be made on the department's own motion.

(c) The department is authorized to accept payment of taxes by electronic funds transfer or other acceptable forms of electronic payment from taxpayers that are not subject to the mandatory electronic payment requirements in this subsection.

(4)(a)(i) The department, for good cause shown, may extend the time for making and filing any return, and may grant such reasonable additional time within which to make and file returns as it may deem proper, but any permanent extension granting the taxpayer a reporting date without penalty more than ten days beyond the due date, and any extension in excess of thirty days must be conditional on deposit with the department of an amount to be determined by the department which shall be approximately equal to the estimated tax liability for the reporting period or periods for which the extension is granted. In the case of a permanent extension or a temporary extension of more than thirty days the deposit must be deposited within the state treasury with other tax funds and a credit recorded to the taxpayer's account which may be applied to taxpayer's liability upon cancellation of the permanent extension or upon reporting of the tax liability where an extension of more than thirty days has been granted.

(ii) The department must review the requirement for deposit at least annually and may require a change in the

amount of the deposit required when it believes that such amount does not approximate the tax liability for the reporting period or periods for which the extension is granted.

(b) During a state of emergency declared under RCW 43.06.010(12), the department, on its own motion or at the request of any taxpayer affected by the emergency, may extend the time for making or filing any return as the department deems proper. The department may not require any deposit as a condition for granting an extension under this subsection (4)(b).

(5) The department must keep full and accurate records of all funds received and disbursed by it. Subject to the provisions of RCW 82.32.105 and 82.32.350, the department must apply the payment of the taxpayer first against penalties and interest, and then upon the tax, without regard to any direction of the taxpayer.

(6) The department may refuse to accept any return that is not accompanied by a remittance of the tax shown to be due thereon or that is not filed electronically as required in this section. When such return is not accepted, the taxpayer is deemed to have failed or refused to file a return and is subject to the procedures provided in RCW 82.32.100 and to the penalties provided in RCW 82.32.090. The above authority to refuse to accept a return may not apply when a return is timely filed electronically and a timely payment has been made by electronic funds transfer or other form of electronic payment as authorized by the department.

(7) Except for returns and remittances required to be transmitted to the department electronically under this section and except as otherwise provided in this chapter, a return or remittance that is transmitted to the department by United States mail is deemed filed or received on the date shown by the post office cancellation mark stamped upon the envelope containing it. A return or remittance that is transmitted to the department electronically is deemed filed or received according to procedures set forth by the department.

(8)(a) For purposes of subsections (2) and (3) of this section, "good cause" means the inability of a taxpayer to comply with the requirements of subsection (2) or (3) of this section because:

(i) The taxpayer does not have the equipment or software necessary to enable the taxpayer to comply with subsection (2) or (3) of this section;

(ii) The equipment or software necessary to enable the taxpayer to comply with subsection (2) or (3) of this section is not functioning properly;

(iii) The taxpayer does not have access to the internet using the taxpayer's own equipment;

(iv) The taxpayer does not have a bank account or a credit card;

(v) The taxpayer's bank is unable to send or receive electronic funds transfer transactions; or

(vi) Some other circumstance or condition exists that, in the department's judgment, prevents the taxpayer from complying with the requirements of subsection (2) or (3) of this section.

(b) "Good cause" also includes any circumstance that, in the department's judgment, supports the efficient or effective administration of the tax laws of this state, including providing relief from the requirements of subsection (2) or (3) of this section to any taxpayer that is voluntarily collecting and remitting this state's sales or use taxes on sales to Washington customers but has no legal requirement to be registered with the department. [2009 c 176 § 2; 2008 c 181 § 502; 1999 c 357 § 3; 1997 c 156 § 3; 1990 c 69 § 2; 1971 ex.s. c 299 § 18; 1965 ex.s. c 141 § 2; 1963 ex.s. c 28 § 6; 1961 c 15 § 82.32.080. Prior: 1951 1st ex.s. c 9 § 8; 1949 c 228 § 22; 1935 c 180 § 191; Rem. Supp. 1949 § 8370-191.]

Part headings not law—2008 c 181: See note following RCW 43.06.220.

Intent—Effective date—1999 c 357: See notes following RCW 82.32.045.

Severability—Effective date—1990 c 69: See notes following RCW 82.32.060.

Effective dates—Severability—1971 ex.s. c 299: See notes following RCW 82.04.050.

Findings—Payment of excise taxes by electronic funds transfer—2006 c 256: See note following RCW 82.32.045.

Tax returns, remittances, etc., filing and receipt when transmitted by mail: RCW 1.12.070.

82.32.085 Electronic funds transfer—Generally. (1) "Electronic funds transfer" means any transfer of funds, other than a transaction originated by check, drafts, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account.

(2)(a) Except as provided in (b) of this subsection, the electronic funds transfer is to be completed so that the state receives collectible funds on or before the next banking day following the due date.

(b) A remittance made using the automated clearinghouse debit method will be deemed to be received on the due date if the electronic funds transfer is initiated on or before 11:59 p.m. pacific time on the due date with an effective payment date on or before the next banking day following the due date.

(3) The department must adopt rules necessary to implement the provisions of RCW 82.32.080 and this section. The rules must include but are not limited to: (a) Coordinating the filing of tax returns with payment by electronic funds transfer or other form of electronic payment as authorized by the department; (b) form and content of electronic funds transfer; (c) voluntary use of electronic funds transfer with permission of the department for those taxpayers that are not subject to the mandatory electronic payment requirement in RCW 82.32.080; (d) use of commonly accepted means of electronic funds transfer; (e) means of crediting and recording proof of payment; and (f) means of correcting errors in transmission. [2009 c 176 § 3; 2006 c 256 § 4; 1990 c 69 § 3.]

Findings—Payment of excise taxes by electronic funds transfer—2006 c 256: "(1) The legislature recognizes the following with respect to the payment of excise taxes to the department of revenue by electronic funds transfer:

(a) Taxpayers required to pay their taxes by electronic funds transfer must do so through the use of either the automated clearinghouse debit method or automated clearinghouse credit method;

(b) For a remittance by electronic funds transfer to be considered timely, the transfer must be completed so that the state receives collectible funds on or before the next banking day following the due date;

(c) For the state to receive collectible funds on or before the next banking day following the due date, taxpayers using the automated clearinghouse debit method must initiate the transfer before 5:00 p.m. pacific time on the due date;

(d) The department of revenue receives information identifying the precise date and time the electronic funds transfer is initiated when a taxpayer uses the debit method; and

(e) The department receives information identifying only the date that the state receives collectible funds when a taxpayer uses the automated clearinghouse credit method.

(2) The legislature therefore finds that a remittance made using the automated clearinghouse debit method should be deemed to be received on the due date if the transfer is initiated on or before 11:59 p.m. pacific time on the due date with an effective payment date on or before the next banking day following the due date. The legislature further finds that because the department does not receive information about when an electronic funds transfer is initiated when a taxpayer uses the automated clearinghouse credit method, such transfers must be completed so that the state receives collectible funds on or before the next banking day following the due date." [2006 c 256 § 5.]

Effective dates—Application—Savings—2006 c 256: See notes following RCW 82.32.045.

Severability—Effective date—1990 c 69: See notes following RCW 82.32.060.

82.32.087 Direct pay permits. ***(Effective until January 1, 2010.)*** (1) The director may grant a direct pay permit to a taxpayer who demonstrates, to the satisfaction of the director, that the taxpayer meets the requirements of this section. The direct pay permit allows the taxpayer to accrue and remit directly to the department use tax on the acquisition of tangible personal property or sales tax on the sale of or charges made for labor and/or services, in accordance with all of the applicable provisions of this title. Any taxpayer that uses a direct pay permit shall remit state and local sales or use tax directly to the department. The agreement by the purchaser to remit tax directly to the department, rather than pay sales or use tax to the seller, relieves the seller of the obligation to collect sales or use tax and requires the buyer to pay use tax on the tangible personal property and sales tax on the sale of or charges made for labor and/or services.

(2)(a) A taxpayer may apply for a permit under this section if: (i) The taxpayer's cumulative tax liability is reasonably expected to be two hundred forty thousand dollars or more in the current calendar year; or (ii) the taxpayer makes purchases subject to the taxes imposed under chapter 82.08 or 82.12 RCW in excess of ten million dollars per calendar year. For the purposes of this section, "tax liability" means the amount required to be remitted to the department for taxes administered under this chapter, except for the taxes imposed or authorized by chapters 82.14A, 82.14B, 82.24, 82.27, 82.29A, and 84.33 RCW.

(b) Application for a permit must be made in writing to the director in a form and manner prescribed by the department. A taxpayer who transacts business in two or more locations may submit one application to cover the multiple locations.

(c) The director must review a direct pay permit application in a timely manner and shall notify the applicant, in writing, of the approval or denial of the application. The department must approve or deny an application based on the applicant's ability to comply with local government use tax coding capabilities and responsibilities; requirements for vendor notification; recordkeeping obligations; electronic data capabilities; and tax reporting procedures. Additionally, an application may be denied if the director determines that denial would be in the best interest of collecting taxes due under this title. The department must provide a direct pay permit to an approved applicant with the notice of approval. The direct pay permit shall clearly state that the holder is solely responsible for the accrual and payment of the tax imposed under chapters 82.08 and 82.12 RCW and that the seller is relieved of liability to collect tax imposed under chapters 82.08 and 82.12 RCW on all sales to the direct pay permit holder. The taxpayer may petition the director for reconsideration of a denial.

(d) A taxpayer who uses a direct pay permit must continue to maintain records that are necessary to a determination of the tax liability in accordance with this title. A direct pay permit is not transferable and the use of a direct pay permit may not be assigned to a third party.

(3) Taxes for which the direct pay permit is used are due and payable on the tax return for the reporting period in which the taxpayer (a) receives the tangible personal property purchased or in which the labor and/or services are performed or (b) receives an invoice for such property or such labor and/or services, whichever period is earlier.

(4) The holder of a direct pay permit must furnish a copy of the direct pay permit to each vendor with whom the taxpayer has opted to use a direct pay permit. Sellers who make sales upon which the sales or use tax is not collected by reason of the provisions of this section, in addition to existing requirements under this title, must maintain a copy of the direct pay permit and any such records or information as the department may specify.

(5) A direct pay permit is subject to revocation by the director at any time the department determines that the taxpayer has violated any provision of this section or that revocation would be in the best interests of collecting the taxes due under this title. The notice of revocation must be in writing and is effective either as of the end of the taxpayer's next normal reporting period or a date deemed appropriate by the director and identified in the revocation notice. The taxpayer may petition the director for reconsideration of a revocation and reinstatement of the permit.

(6) Any taxpayer who chooses to no longer use a direct pay permit or whose permit is revoked by the department, must return the permit to the department and immediately make a good faith effort to notify all vendors to whom the permit was given, advising them that the permit is no longer valid.

(7) Except as provided in this subsection, the direct pay permit may be used for any purchase of tangible personal property and any retail sale under RCW 82.04.050. The direct pay permit may not be used for:

(a) Purchases of meals or beverages;

(b) Purchases of motor vehicles, trailers, boats, airplanes, and other property subject to requirements for title transactions by the department of licensing;

(c) Purchases for which a resale certificate may be used;

(d) Purchases that meet the definitions of RCW 82.04.050 (2)(e) and (f), (3)(a) through (d), (f), and (g), and (5); or

(e) Other activities subject to tax under chapter 82.08 or 82.12 RCW that the department by rule designates, consistent with the purposes of this section, as activities for which a direct pay permit is not appropriate and may not be used. [2009 c 176 § 5; 2001 c 188 § 2.]

Finding—Intent—2001 c 188: "The legislature finds that programs to allow buyers to remit sales and use tax, rather than traditional collection and remittance by the seller of sales and use tax, can assist in tax compliance, ease administrative burdens, and reduce impacts on buyers and sellers. It is the intent of the legislature to grant the department of revenue the authority to permit certain buyers direct payment authority of tax in those instances where it can be shown, to the satisfaction of the department, that direct payment does not burden sellers and does not complicate administration for the department. Buyers authorized for direct payment will remit tax directly to the department, and will pay use tax on tangible personal property and sales tax on retail labor and/or services.

This act does not affect the requirements to use a resale certificate nor does it affect the business and occupation tax treatment of the seller." [2001 c 188 § 1.]

Effective date—2001 c 188: "This act takes effect August 1, 2001." [2001 c 188 § 7.]

82.32.087 Direct pay permits. ***(Effective January 1, 2010.)*** (1) The director may grant a direct pay permit to a taxpayer who demonstrates, to the satisfaction of the director, that the taxpayer meets the requirements of this section. The direct pay permit allows the taxpayer to accrue and remit directly to the department use tax on the acquisition of tangible personal property or sales tax on the sale of or charges made for labor and/or services, in accordance with all of the applicable provisions of this title. Any taxpayer that uses a direct pay permit shall remit state and local sales or use tax directly to the department. The agreement by the purchaser to remit tax directly to the department, rather than pay sales or use tax to the seller, relieves the seller of the obligation to collect sales or use tax and requires the buyer to pay use tax on the tangible personal property and sales tax on the sale of or charges made for labor and/or services.

(2)(a) A taxpayer may apply for a permit under this section if: (i) The taxpayer's cumulative tax liability is reasonably expected to be two hundred forty thousand dollars or more in the current calendar year; or (ii) the taxpayer makes purchases subject to the taxes imposed under chapter 82.08 or 82.12 RCW in excess of ten million dollars per calendar year. For the purposes of this section, "tax liability" means the amount required to be remitted to the department for taxes administered under this chapter, except for the taxes imposed or authorized by chapters 82.14A, 82.14B, 82.24, 82.27, 82.29A, and 84.33 RCW.

(b) Application for a permit must be made in writing to the director in a form and manner prescribed by the department. A taxpayer who transacts business in two or more locations may submit one application to cover the multiple locations.

(c) The director must review a direct pay permit application in a timely manner and shall notify the applicant, in writing, of the approval or denial of the application. The department must approve or deny an application based on the applicant's ability to comply with local government use tax coding capabilities and responsibilities; requirements for vendor notification; recordkeeping obligations; electronic data capabilities; and tax reporting procedures. Additionally, an application may be denied if the director determines that denial would be in the best interest of collecting taxes due under this title. The department must provide a direct pay permit to an approved applicant with the notice of approval. The direct pay permit shall clearly state that the holder is solely responsible for the accrual and payment of the tax imposed under chapters 82.08 and 82.12 RCW and that the seller is relieved of liability to collect tax imposed under chapters 82.08 and 82.12 RCW on all sales to the direct pay permit holder. The taxpayer may petition the director for reconsideration of a denial.

(d) A taxpayer who uses a direct pay permit must continue to maintain records that are necessary to a determination of the tax liability in accordance with this title. A direct pay permit is not transferable and the use of a direct pay permit may not be assigned to a third party.

(3) Taxes for which the direct pay permit is used are due and payable on the tax return for the reporting period in which the taxpayer (a) receives the tangible personal property purchased or in which the labor and/or services are performed or (b) receives an invoice for such property or such labor and/or services, whichever period is earlier.

(4) The holder of a direct pay permit must furnish a copy of the direct pay permit to each vendor with whom the taxpayer has opted to use a direct pay permit. Sellers who make sales upon which the sales or use tax is not collected by reason of the provisions of this section, in addition to existing requirements under this title, must maintain a copy of the direct pay permit and any such records or information as the department may specify.

(5) A direct pay permit is subject to revocation by the director at any time the department determines that the taxpayer has violated any provision of this section or that revocation would be in the best interests of collecting the taxes due under this title. The notice of revocation must be in writing and is effective either as of the end of the taxpayer's next normal reporting period or a date deemed appropriate by the director and identified in the revocation notice. The taxpayer may petition the director for reconsideration of a revocation and reinstatement of the permit.

(6) Any taxpayer who chooses to no longer use a direct pay permit or whose permit is revoked by the department, must return the permit to the department and immediately make a good faith effort to notify all vendors to whom the permit was given, advising them that the permit is no longer valid.

(7) Except as provided in this subsection, the direct pay permit may be used for any purchase of tangible personal property and any retail sale under RCW 82.04.050. The direct pay permit may not be used for:

(a) Purchases of meals or beverages;

(b) Purchases of motor vehicles, trailers, boats, airplanes, and other property subject to requirements for title transactions by the department of licensing;

(c) Purchases for which a seller's permit or uniform exemption certificate authorized under RCW 82.04.470 may be used;

(d) Purchases that meet the definitions of RCW 82.04.050 (2) (e) and (f), (3) (a) through (d), (f), and (g), and (5); or

(e) Other activities subject to tax under chapter 82.08 or 82.12 RCW that the department by rule designates, consistent with the purposes of this section, as activities for which a direct pay permit is not appropriate and may not be used. [2009 c 563 § 210; 2009 c 176 § 5; 2001 c 188 § 2.]

Reviser's note: This section was amended by 2009 c 176 § 5 and by 2009 c 563 § 210, each without reference to the other. Both amendments are

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

Finding—Intent—Construction—Effective date—Reports and recommendations—2009 c 563: See notes following RCW 82.32.780.

Finding—Intent—2001 c 188: "The legislature finds that programs to allow buyers to remit sales and use tax, rather than traditional collection and remittance by the seller of sales and use tax, can assist in tax compliance, ease administrative burdens, and reduce impacts on buyers and sellers. It is the intent of the legislature to grant the department of revenue the authority to permit certain buyers direct payment authority of tax in those instances where it can be shown, to the satisfaction of the department, that direct payment does not burden sellers and does not complicate administration for the department. Buyers authorized for direct payment will remit tax directly to the department, and will pay use tax on tangible personal property and sales tax on retail labor and/or services.

This act does not affect the requirements to use a resale certificate nor does it affect the business and occupation tax treatment of the seller." [2001 c 188 § 1.]

Effective date—2001 c 188: "This act takes effect August 1, 2001." [2001 c 188 § 7.]

82.32.115 Records in possession of a third party—Subpoenas. (1) If there is probable cause to believe that records in the possession of a third party will aid the department in connection with its official duties relating to an audit, collection activity, or a civil or criminal investigation, a superior or district court judge must sign and issue a subpoena for the production of such records to the department. The department may apply for a subpoena under this section to the superior court or district court for Thurston county or for the county in which the third party is located. The subpoena must be served on the third party as in civil actions.

(2) Upon application of the third party, the court issuing the subpoena may require the department to reimburse the third party for reasonable costs incurred in producing the records specified in the subpoena, in an amount set by the court. However, the court may not condition compliance with the subpoena on the department's payment of such costs.

(3) Unless otherwise provided in the subpoena, a response to a subpoena issued under this section is sufficient if a copy or printout is provided to the department, and the third party also submits a signed declaration, under penalty of perjury, that the copy or printout is a true and correct copy or printout of the declarant's records.

(4) This section does not preclude the use of other legally authorized means of obtaining records, nor preclude the assertion of any legally recognized privileges.

(5) The department may not disclose any return or tax information, as defined in RCW 82.32.330, obtained in response to a subpoena issued under this section, except as authorized in RCW 82.32.330.

(6) A third party may not be held civilly liable for any harm resulting from that person's compliance with the provisions of this section.

(7) The entire court file of any proceeding instituted under this section must be sealed and is not open to public inspection by any person except upon order of the court as authorized by law. [2009 c 309 § 1.]

82.32.135 Notice, assessment, other information—Electronic delivery. (1) Except as otherwise provided in this subsection, whenever the department is required to send any assessment, notice, or any other information to persons by regular mail, the department must instead provide the assessment, notice, or other information electronically. The department may implement the requirement in this subsection in phases. The department, for good cause, may waive the requirement in this subsection for any taxpayer. In the discretion of the department, a waiver under this subsection may be made temporary or permanent, and may be made on the department's own motion.

(2) If the assessment, notice, or other information is subject to the confidentiality provisions of RCW 82.32.330, the department must use methods reasonably designed to protect the information from unauthorized disclosure. The provisions of this subsection (2) may be waived by a taxpayer. The waiver must be in writing and may be provided to the department electronically. A person may provide a waiver with respect to a particular item of information or may give a blanket waiver with respect to any item of information or certain items of information to be provided electronically. A blanket waiver will continue until revoked in writing by the taxpayer. Such revocation may be provided to the department electronically in a manner provided or approved by the department.

(3) Any assessment, notice, or other information provided by the department electronically to a person is deemed to be received by the taxpayer on the date that the department electronically sends the information to the person or electronically notifies the person that the information is available to be accessed by the person.

(4) This section also applies to any information that is not expressly required by statute to be sent by regular mail, but is customarily sent by the department using regular mail, to persons entitled to receive the information.

(5)(a) For purposes of this section, "good cause" includes the inability of the department to comply with this section for any reason, including lacking information necessary to send information to a person electronically or to electronically notify a person that information is available to be accessed by the person.

(b) "Good cause" also includes the inability of a person to receive or otherwise obtain information from the department electronically because:

(i) The person does not have the equipment or software necessary to enable the person to receive or otherwise obtain information from the department electronically;

(ii) The equipment or software necessary to enable the person to receive or otherwise obtain information from the department electronically is not functioning properly;

(iii) The person does not have access to the internet using the person's own equipment; or

(iv) Some other circumstance or condition exists that, in the department's judgment, prevents the taxpayer from receiving or otherwise obtaining information from the department electronically. [2009 c 176 § 1; 2007 c 111 § 113.]

Part headings not law—2007 c 111: See note following RCW 82.16.120.

82.32.235 Notice and order to withhold and deliver property due or owned by taxpayer—Bond—Judgment by default. (1) In addition to the remedies provided in this chapter the department is authorized to issue to any person, a notice and order to withhold and deliver property of any kind

whatsoever when there is reason to believe that there is in the possession of such person, property which is or will become due, owing, or belonging to any taxpayer against whom a warrant has been filed.

(2) The sheriff of the county where the service is made, or his or her deputy, or any duly authorized representative of the department may personally serve the notice and order to withhold and deliver upon the person to whom it is directed or may do so by certified mail, with return receipt requested.

(3)(a) The department is authorized to issue a notice and order to withhold and deliver to any financial institution in the form of a listing of all or a portion of the unsatisfied tax warrants filed under this chapter with the clerk of the superior court of a county of the state, except tax warrants subject to a payment agreement, which is not in default, between the department and the taxpayer.

(b) As an alternative to the methods of service in subsection (2) of this section, the department may serve the notice and order to withhold and deliver authorized under this subsection electronically. The remedy in this subsection (3) is in addition to any other remedies authorized by law.

(c) No more than one notice and order to withhold and deliver under this subsection (3) may be served on the same financial institution in a calendar month.

(d) Notice and order to withhold and deliver under this subsection (3) must include the federal taxpayer identification number of each taxpayer.

(e) For purposes of this subsection, "financial institution" means a bank, trust company, mutual savings bank, savings and loan association, or credit union authorized to do business and accept deposits in this state under state or federal law.

(f) The department may provide a financial institution relief from a notice and order to withhold and deliver in the form provided under this subsection (3) upon the request of the financial institution. The department must consider the size, customer base, and geographic location of the financial institution when considering whether to provide relief. The department must serve any financial institution so relieved under subsection (1) of this section.

(4) Any person who has been served with a notice and order to withhold and deliver under subsection (1) of this section must answer the notice within twenty days, exclusive of the day of service. Any person who has been served with a notice and order to withhold and deliver under subsection (3) of this section must answer the notice within thirty days, exclusive of the day of service. The answer must be in writing, under oath if required by the department, and include true answers to the matters inquired of in the notice. Any person served under subsection (3) of this section may answer in aggregate within thirty days, but must answer separately as to each taxpayer listed and specify any property by taxpayer which is delivered. The department must allow any person served electronically under subsection (3) of this section to answer the notice and order to withhold and deliver electronically in a format provided or approved by the department.

(5) In the event there is in the possession of any person served with a notice and order to withhold and deliver, any property which may be subject to the claim of the department, such property must be delivered immediately to the department of revenue or its duly authorized representative upon demand. The department must hold the property in trust for application on the indebtedness involved or for return, without interest, in accordance with final determination of liability or nonliability. Instead of delivering the property to the department or the department's duly authorized representative, the person may furnish a bond satisfactory to the department conditioned upon final determination of liability.

(6) Should any person, having been served with a notice and order to withhold and deliver, fail to answer the notice and order to withhold and deliver within the time prescribed in this section or otherwise fail to comply with the duties imposed in this section, the department may bring a proceeding, in the superior court of Thurston county or of the county in which service of the notice was made, to enforce the notice and order to withhold and deliver. The court may render judgment by default against such person for the full amount claimed by the department in the notice and order to withhold and deliver or may grant such other relief as the court deems just, together with costs.

(7) For purposes of this section, "person" has the same meaning as in RCW 82.04.030 and also includes any agency, department, or institution of the state. [2009 c 562 § 1; 1987 c 208 § 1; 1975 1st ex.s. c 278 § 85; 1971 ex.s. c 299 § 22; 1963 ex.s. c 28 § 11.]

Finding—2009 c 562: "(1) The legislature finds that the state's vital interest in collecting lawfully due taxes must be balanced against the burden of complying with section 1(3) of this act, particularly for small financial institutions.

(2)(a) Therefore, the legislature directs the department of revenue to work with interested financial institutions to develop policies regarding the frequency of service under section 1(3) of this act and under what circumstances a notice and order to withhold and deliver will contain only a partial list of unsatisfied tax warrants eligible to be included in the notice. The policies should take into account the size of a financial institution, location of a financial institution, number of business accounts that a financial institution has, and any other factors the department may choose to consider.

(b) The department is also directed to develop a policy regarding the information to be contained in a notice and order to withhold and deliver to ensure that financial institutions can accurately match their records with the names of tax debtors.

(3) The department must report to the fiscal committees of the legislature on the implementation of section 1(3) of this act by January 1, 2012. The report should describe the policies developed by the department as directed in subsection (2) of this section. The report should also describe any difficulties the department encountered in implementing section 1(3) of this act and any suggestions the department may have to improve the effectiveness of section 1(3) of this act, reduce the burden on financial institutions in complying with section 1(3) of this act, or both." [2009 c 562 § 2.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

Effective dates—Severability—1971 ex.s. c 299: See notes following RCW 82.04.050.

82.32.290 Unlawful acts—Penalties. ***(Effective January 1, 2010.)*** (1)(a) It shall be unlawful:

(i) For any person to engage in business without having obtained a certificate of registration as provided in this chapter;

(ii) For the president, vice president, secretary, treasurer, or other officer of any company to cause or permit the company to engage in business without having obtained a certificate of registration as provided in this chapter;

(iii) For any person to tear down or remove any order or notice posted by the department;

(iv) For any person to aid or abet another in any attempt to evade the payment of any tax or any part thereof;

(v) For any purchaser to fraudulently sign or furnish to a seller a seller's permit or uniform exemption certificate authorized under RCW 82.04.470 without intent to resell the property purchased; or

(vi) For any person to fail or refuse to permit the examination of any book, paper, account, record, or other data by the department or its duly authorized agent; or to fail or refuse to permit the inspection or appraisal of any property by the department or its duly authorized agent; or to refuse to offer testimony or produce any record as required.

(b) Any person violating any of the provisions of this subsection (1) shall be guilty of a gross misdemeanor in accordance with chapter 9A.20 RCW.

(2)(a) It shall be unlawful:

(i) For any person to engage in business after revocation of a certificate of registration;

(ii) For the president, vice president, secretary, treasurer, or other officer of any company to cause or permit the company to engage in business after revocation of a certificate of registration; or

(iii) For any person to make any false or fraudulent return or false statement in any return, with intent to defraud the state or evade the payment of any tax or part thereof.

(b) Any person violating any of the provisions of this subsection (2) shall be guilty of a class C felony in accordance with chapter 9A.20 RCW.

(3) In addition to the foregoing penalties, any person who knowingly swears to or verifies any false or fraudulent return, or any return containing any false or fraudulent statement with the intent aforesaid, shall be guilty of the offense of perjury in the second degree; and any company for which a false return, or a return containing a false statement, as aforesaid, is made, shall be punished, upon conviction thereof, by a fine of not more than one thousand dollars. All penalties or punishments provided in this section shall be in addition to all other penalties provided by law. [2009 c 563 § 211; 1985 c 414 § 2; 1975 1st ex.s. c 278 § 89; 1961 c 15 § 82.32.290. Prior: 1935 c 180 § 207; RRS § 8370-207.]

Finding—Intent—Construction—Effective date—Reports and recommendations—2009 c 563: See notes following RCW 82.32.780.

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

82.32.291 Resale or exemption certificate, unlawful use—Penalty—Rules *(as amended by 2009 c 289).* Any person who uses a resale certificate to purchase items or services without payment of sales tax, or who uses a uniform exemption certificate approved by the streamlined sales and use tax agreement governing board to claim a purchase for resale exemption, and who is not entitled to use the resale or exemption certificate for the purchase shall be assessed a penalty of fifty percent of the tax due, in addition to all other taxes, penalties, and interest due, on the improperly purchased item or service. The department may waive the penalty imposed under this section if it finds that the use of the resale or exemption certificate was due to circumstances beyond the taxpayer's control or if the resale or exemption certificate was properly used for purchases for dual purposes. The department shall define by rule what circumstances are considered to be beyond the taxpayer's control. [2009 c 289 § 4; 1993 sp.s. c 25 § 703.]

82.32.291 Seller's permit or exemption certificate, unlawful use—Penalty—Rules *(as amended by 2009 c 563). (Effective January 1, 2010.)* Any person who uses a ((~~resale certificate~~)) seller's permit to purchase items or services without payment of sales tax, or who uses a uniform exemption certificate developed by the multistate tax commission or approved by the streamlined sales and use tax agreement governing board to claim a purchase for resale exemption, and who is not entitled to use the seller's permit or exemption certificate for the purchase shall be assessed a penalty of fifty percent of the tax due, in addition to all other taxes, penalties, and interest due, on the improperly purchased item or service. The department may waive the penalty imposed under this section if it finds that the use of the seller's permit or exemption certificate was due to circumstances beyond the taxpayer's control or if the seller's permit or exemption certificate was properly used for purchases for dual purposes. The department shall define by rule what circumstances are considered to be beyond the taxpayer's control. [2009 c 563 § 212; 1993 sp.s. c 25 § 703.]

Reviser's note: RCW 82.32.291 was amended twice during the 2009 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

Finding—Intent—Construction—Effective date—Reports and recommendations—2009 c 563: See notes following RCW 82.32.780.

Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25: See notes following RCW 82.04.230.

Resale certificates: RCW 82.04.470 and 82.08.130.

82.32.330 Disclosure of return or tax information. *(Effective until January 1, 2010.)* (1) For purposes of this section:

(a) "Disclose" means to make known to any person in any manner whatever a return or tax information;

(b) "Return" means a tax or information return or claim for refund required by, or provided for or permitted under, the laws of this state which is filed with the department of revenue by, on behalf of, or with respect to a person, and any amendment or supplement thereto, including supporting schedules, attachments, or lists that are supplemental to, or part of, the return so filed;

(c) "Tax information" means (i) a taxpayer's identity, (ii) the nature, source, or amount of the taxpayer's income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability deficiencies, overassessments, or tax payments, whether taken from the taxpayer's books and records or any other source, (iii) whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing, (iv) a part of a written determination that is not designated as a precedent and disclosed pursuant to RCW 82.32.410, or a background file document relating to a written determination, and (v) other data received by, recorded by, prepared by, furnished to, or collected by the department of revenue with respect to the determination of the existence, or possible existence, of liability, or the amount thereof, of a person under the laws of this state for a tax, penalty, interest, fine, forfeiture, or other imposition, or offense: PROVIDED, That data, material, or documents that do not disclose information related to a specific or identifiable taxpayer do not constitute tax information under this section. Except as provided by RCW 82.32.410, nothing in this chapter shall require any person possessing data, material, or documents made confidential and privileged by this section to delete information from such data, material, or documents so as to permit its disclosure;

(d) "State agency" means every Washington state office, department, division, bureau, board, commission, or other state agency;

(e) "Taxpayer identity" means the taxpayer's name, address, telephone number, registration number, or any com-

bination thereof, or any other information disclosing the identity of the taxpayer; and

(f) "Department" means the department of revenue or its officer, agent, employee, or representative.

(2) Returns and tax information shall be confidential and privileged, and except as authorized by this section, neither the department of revenue nor any other person may disclose any return or tax information.

(3) This section does not prohibit the department of revenue from:

(a) Disclosing such return or tax information in a civil or criminal judicial proceeding or an administrative proceeding:

(i) In respect of any tax imposed under the laws of this state if the taxpayer or its officer or other person liable under Title 82 RCW is a party in the proceeding;

(ii) In which the taxpayer about whom such return or tax information is sought and another state agency are adverse parties in the proceeding; or

(iii) Brought by the department under RCW 18.27.040 or 19.28.071;

(b) Disclosing, subject to such requirements and conditions as the director shall prescribe by rules adopted pursuant to chapter 34.05 RCW, such return or tax information regarding a taxpayer to such taxpayer or to such person or persons as that taxpayer may designate in a request for, or consent to, such disclosure, or to any other person, at the taxpayer's request, to the extent necessary to comply with a request for information or assistance made by the taxpayer to such other person: PROVIDED, That tax information not received from the taxpayer shall not be so disclosed if the director determines that such disclosure would compromise any investigation or litigation by any federal, state, or local government agency in connection with the civil or criminal liability of the taxpayer or another person, or that such disclosure would identify a confidential informant, or that such disclosure is contrary to any agreement entered into by the department that provides for the reciprocal exchange of information with other government agencies which agreement requires confidentiality with respect to such information unless such information is required to be disclosed to the taxpayer by the order of any court;

(c) Disclosing the name of a taxpayer with a deficiency greater than five thousand dollars and against whom a warrant under RCW 82.32.210 has been either issued or filed and remains outstanding for a period of at least ten working days. The department shall not be required to disclose any information under this subsection if a taxpayer: (i) Has been issued a tax assessment; (ii) has been issued a warrant that has not been filed; and (iii) has entered a deferred payment arrangement with the department of revenue and is making payments upon such deficiency that will fully satisfy the indebtedness within twelve months;

(d) Disclosing the name of a taxpayer with a deficiency greater than five thousand dollars and against whom a warrant under RCW 82.32.210 has been filed with a court of record and remains outstanding;

(e) Publishing statistics so classified as to prevent the identification of particular returns or reports or items thereof;

(f) Disclosing such return or tax information, for official purposes only, to the governor or attorney general, or to any state agency, or to any committee or subcommittee of the legislature dealing with matters of taxation, revenue, trade, commerce, the control of industry or the professions;

(g) Permitting the department of revenue's records to be audited and examined by the proper state officer, his or her agents and employees;

(h) Disclosing any such return or tax information to a peace officer as defined in RCW 9A.04.110 or county prosecuting attorney, for official purposes. The disclosure may be made only in response to a search warrant, subpoena, or other court order, unless the disclosure is for the purpose of criminal tax enforcement. A peace officer or county prosecuting attorney who receives the return or tax information may disclose that return or tax information only for use in the investigation and a related court proceeding, or in the court proceeding for which the return or tax information originally was sought;

(i) Disclosing any such return or tax information to the proper officer of the internal revenue service of the United States, the Canadian government or provincial governments of Canada, or to the proper officer of the tax department of any state or city or town or county, for official purposes, but only if the statutes of the United States, Canada or its provincial governments, or of such other state or city or town or county, as the case may be, grants substantially similar privileges to the proper officers of this state;

(j) Disclosing any such return or tax information to the United States Department of Justice, including the Bureau of Alcohol, Tobacco, Firearms and Explosives, the Department of Defense, the Immigration and Customs Enforcement and the Customs and Border Protection agencies of the United States Department of Homeland Security, the United States Coast Guard, the Alcohol and Tobacco Tax and Trade Bureau of the United States Department of Treasury, and the United States Department of Transportation, or any authorized representative of these federal agencies, for official purposes;

(k) Publishing or otherwise disclosing the text of a written determination designated by the director as a precedent pursuant to RCW 82.32.410;

(l) Disclosing, in a manner that is not associated with other tax information, the taxpayer name, entity type, business address, mailing address, revenue tax registration numbers, North American industry classification system or standard industrial classification code of a taxpayer, and the dates of opening and closing of business. This subsection shall not be construed as giving authority to the department to give, sell, or provide access to any list of taxpayers for any commercial purpose;

(m) Disclosing such return or tax information that is also maintained by another Washington state or local governmental agency as a public record available for inspection and copying under the provisions of chapter 42.56 RCW or is a document maintained by a court of record not otherwise prohibited from disclosure;

(n) Disclosing such return or tax information to the United States department of agriculture for the limited purpose of investigating food stamp fraud by retailers;

(o) Disclosing to a financial institution, escrow company, or title company, in connection with specific real property that is the subject of a real estate transaction, current

amounts due the department for a filed tax warrant, judgment, or lien against the real property;

(p) Disclosing to a person against whom the department has asserted liability as a successor under RCW 82.32.140 return or tax information pertaining to the specific business of the taxpayer to which the person has succeeded;

(q) Disclosing such return or tax information in the possession of the department relating to the administration or enforcement of the real estate excise tax imposed under chapter 82.45 RCW, including information regarding transactions exempt or otherwise not subject to tax;

(r) Disclosing to local taxing jurisdictions the identity of sellers granted relief under RCW 82.32.430(5)(b)(i) and the period for which relief is granted; or

(s) Disclosing such return or tax information to the court in respect to the department's application for a subpoena under RCW 82.32.115.

(4)(a) The department may disclose return or taxpayer information to a person under investigation or during any court or administrative proceeding against a person under investigation as provided in this subsection (4). The disclosure must be in connection with the department's official duties relating to an audit, collection activity, or a civil or criminal investigation. The disclosure may occur only when the person under investigation and the person in possession of data, materials, or documents are parties to the return or tax information to be disclosed. The department may disclose return or tax information such as invoices, contracts, bills, statements, resale or exemption certificates, or checks. However, the department may not disclose general ledgers, sales or cash receipt journals, check registers, accounts receivable/payable ledgers, general journals, financial statements, expert's workpapers, income tax returns, state tax returns, tax return workpapers, or other similar data, materials, or documents.

(b) Before disclosure of any tax return or tax information under this subsection (4), the department shall, through written correspondence, inform the person in possession of the data, materials, or documents to be disclosed. The correspondence shall clearly identify the data, materials, or documents to be disclosed. The department may not disclose any tax return or tax information under this subsection (4) until the time period allowed in (c) of this subsection has expired or until the court has ruled on any challenge brought under (c) of this subsection.

(c) The person in possession of the data, materials, or documents to be disclosed by the department has twenty days from the receipt of the written request required under (b) of this subsection to petition the superior court of the county in which the petitioner resides for injunctive relief. The court shall limit or deny the request of the department if the court determines that:

(i) The data, materials, or documents sought for disclosure are cumulative or duplicative, or are obtainable from some other source that is more convenient, less burdensome, or less expensive;

(ii) The production of the data, materials, or documents sought would be unduly burdensome or expensive, taking into account the needs of the department, the amount in controversy, limitations on the petitioner's resources, and the importance of the issues at stake; or

(iii) The data, materials, or documents sought for disclosure contain trade secret information that, if disclosed, could harm the petitioner.

(d) The department shall reimburse reasonable expenses for the production of data, materials, or documents incurred by the person in possession of the data, materials, or documents to be disclosed.

(e) Requesting information under (b) of this subsection that may indicate that a taxpayer is under investigation does not constitute a disclosure of tax return or tax information under this section.

(5) Service of a subpoena issued under RCW 82.32.115 does not constitute a disclosure of return or tax information under this section. Notwithstanding anything else to the contrary in this section, a person served with a subpoena under RCW 82.32.115 may disclose the existence or content of the subpoena to that person's legal counsel.

(6) Any person acquiring knowledge of any return or tax information in the course of his or her employment with the department of revenue and any person acquiring knowledge of any return or tax information as provided under subsection (3)(f), (g), (h), (i), (j), or (n) of this section, who discloses any such return or tax information to another person not entitled to knowledge of such return or tax information under the provisions of this section, is guilty of a misdemeanor. If the person guilty of such violation is an officer or employee of the state, such person shall forfeit such office or employment and shall be incapable of holding any public office or employment in this state for a period of two years thereafter. [2009 c 309 § 2; 2008 c 81 § 11; 2007 c 6 § 1502; 2006 c 177 § 7. Prior: 2005 c 326 § 1; 2005 c 274 § 361; prior: 2000 c 173 § 1; 2000 c 106 § 1; 1998 c 234 § 1; 1996 c 184 § 5; 1995 c 197 § 1; 1991 c 330 § 1; 1990 c 67 § 1; 1985 c 414 § 9; 1984 c 138 § 12; 1969 ex.s. c 104 § 1; 1963 ex.s. c 28 § 10; 1961 c 15 § 82.32.330; prior: 1943 c 156 § 12; 1935 c 180 § 210; Rem. Supp. 1943 § 8370-210.]

Findings—Savings—Effective date—2008 c 81: See notes following RCW 82.08.975.

Part headings not law—Savings—Effective date—Severability—2007 c 6: See notes following RCW 82.32.020.

Findings—Intent—2007 c 6: See note following RCW 82.14.495.

Effective date—2006 c 177 §§ 1-9: See note following RCW 82.04.250.

Part headings not law—Effective date—2005 c 274: See RCW 42.56.901 and 42.56.902.

Effective date—2000 c 173: "This act takes effect July 1, 2000." [2000 c 173 § 2.]

Effective date—2000 c 106: "This act takes effect July 1, 2000." [2000 c 106 § 13.]

Effective date—1996 c 184: See note following RCW 46.16.010.

Effective date—1995 c 197: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 c 197 § 2.]

82.32.330 Disclosure of return or tax information. ***(Effective January 1, 2010.)*** (1) For purposes of this section:

(a) "Disclose" means to make known to any person in any manner whatever a return or tax information;

(b) "Return" means a tax or information return or claim for refund required by, or provided for or permitted under, the laws of this state which is filed with the department of reve-

nue by, on behalf of, or with respect to a person, and any amendment or supplement thereto, including supporting schedules, attachments, or lists that are supplemental to, or part of, the return so filed;

(c) "Tax information" means (i) a taxpayer's identity, (ii) the nature, source, or amount of the taxpayer's income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability deficiencies, overassessments, or tax payments, whether taken from the taxpayer's books and records or any other source, (iii) whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing, (iv) a part of a written determination that is not designated as a precedent and disclosed pursuant to RCW 82.32.410, or a background file document relating to a written determination, and (v) other data received by, recorded by, prepared by, furnished to, or collected by the department of revenue with respect to the determination of the existence, or possible existence, of liability, or the amount thereof, of a person under the laws of this state for a tax, penalty, interest, fine, forfeiture, or other imposition, or offense. However, data, material, or documents that do not disclose information related to a specific or identifiable taxpayer do not constitute tax information under this section. Except as provided by RCW 82.32.410, nothing in this chapter shall require any person possessing data, material, or documents made confidential and privileged by this section to delete information from such data, material, or documents so as to permit its disclosure;

(d) "State agency" means every Washington state office, department, division, bureau, board, commission, or other state agency;

(e) "Taxpayer identity" means the taxpayer's name, address, telephone number, registration number, or any combination thereof, or any other information disclosing the identity of the taxpayer; and

(f) "Department" means the department of revenue or its officer, agent, employee, or representative.

(2) Returns and tax information are confidential and privileged, and except as authorized by this section, neither the department of revenue nor any other person may disclose any return or tax information.

(3) This section does not prohibit the department of revenue from:

(a) Disclosing such return or tax information in a civil or criminal judicial proceeding or an administrative proceeding:

(i) In respect of any tax imposed under the laws of this state if the taxpayer or its officer or other person liable under Title 82 RCW is a party in the proceeding;

(ii) In which the taxpayer about whom such return or tax information is sought and another state agency are adverse parties in the proceeding; or

(iii) Brought by the department under RCW 18.27.040 or 19.28.071;

(b) Disclosing, subject to such requirements and conditions as the director prescribes by rules adopted pursuant to chapter 34.05 RCW, such return or tax information regarding a taxpayer to such taxpayer or to such person or persons as that taxpayer may designate in a request for, or consent to, such disclosure, or to any other person, at the taxpayer's request, to the extent necessary to comply with a request for information or assistance made by the taxpayer to such other person. However, tax information not received from the taxpayer must not be so disclosed if the director determines that such disclosure would compromise any investigation or litigation by any federal, state, or local government agency in connection with the civil or criminal liability of the taxpayer or another person, or that such disclosure would identify a confidential informant, or that such disclosure is contrary to any agreement entered into by the department that provides for the reciprocal exchange of information with other government agencies which agreement requires confidentiality with respect to such information unless such information is required to be disclosed to the taxpayer by the order of any court;

(c) Disclosing the name of a taxpayer with a deficiency greater than five thousand dollars and against whom a warrant under RCW 82.32.210 has been either issued or filed and remains outstanding for a period of at least ten working days. The department is not required to disclose any information under this subsection if a taxpayer: (i) Has been issued a tax assessment; (ii) has been issued a warrant that has not been filed; and (iii) has entered a deferred payment arrangement with the department of revenue and is making payments upon such deficiency that will fully satisfy the indebtedness within twelve months;

(d) Disclosing the name of a taxpayer with a deficiency greater than five thousand dollars and against whom a warrant under RCW 82.32.210 has been filed with a court of record and remains outstanding;

(e) Publishing statistics so classified as to prevent the identification of particular returns or reports or items thereof;

(f) Disclosing such return or tax information, for official purposes only, to the governor or attorney general, or to any state agency, or to any committee or subcommittee of the legislature dealing with matters of taxation, revenue, trade, commerce, the control of industry or the professions;

(g) Permitting the department of revenue's records to be audited and examined by the proper state officer, his or her agents and employees;

(h) Disclosing any such return or tax information to a peace officer as defined in RCW 9A.04.110 or county prosecuting attorney, for official purposes. The disclosure may be made only in response to a search warrant, subpoena, or other court order, unless the disclosure is for the purpose of criminal tax enforcement. A peace officer or county prosecuting attorney who receives the return or tax information may disclose that return or tax information only for use in the investigation and a related court proceeding, or in the court proceeding for which the return or tax information originally was sought;

(i) Disclosing any such return or tax information to the proper officer of the internal revenue service of the United States, the Canadian government or provincial governments of Canada, or to the proper officer of the tax department of any state or city or town or county, for official purposes, but only if the statutes of the United States, Canada or its provincial governments, or of such other state or city or town or county, as the case may be, grants substantially similar privileges to the proper officers of this state;

(j) Disclosing any such return or tax information to the United States Department of Justice, including the Bureau of Alcohol, Tobacco, Firearms and Explosives, the Department

of Defense, the Immigration and Customs Enforcement and the Customs and Border Protection agencies of the United States Department of Homeland Security, the United States Coast Guard, the Alcohol and Tobacco Tax and Trade Bureau of the United States Department of Treasury, and the United States Department of Transportation, or any authorized representative of these federal agencies, for official purposes;

(k) Publishing or otherwise disclosing the text of a written determination designated by the director as a precedent pursuant to RCW 82.32.410;

(l) Disclosing, in a manner that is not associated with other tax information, the taxpayer name, entity type, business address, mailing address, revenue tax registration numbers, seller's permit numbers and the status of such permits, North American industry classification system or standard industrial classification code of a taxpayer, and the dates of opening and closing of business. This subsection must not be construed as giving authority to the department to give, sell, or provide access to any list of taxpayers for any commercial purpose;

(m) Disclosing such return or tax information that is also maintained by another Washington state or local governmental agency as a public record available for inspection and copying under the provisions of chapter 42.56 RCW or is a document maintained by a court of record and is not otherwise prohibited from disclosure;

(n) Disclosing such return or tax information to the United States department of agriculture for the limited purpose of investigating food stamp fraud by retailers;

(o) Disclosing to a financial institution, escrow company, or title company, in connection with specific real property that is the subject of a real estate transaction, current amounts due the department for a filed tax warrant, judgment, or lien against the real property;

(p) Disclosing to a person against whom the department has asserted liability as a successor under RCW 82.32.140 return or tax information pertaining to the specific business of the taxpayer to which the person has succeeded;

(q) Disclosing such return or tax information in the possession of the department relating to the administration or enforcement of the real estate excise tax imposed under chapter 82.45 RCW, including information regarding transactions exempt or otherwise not subject to tax;

(r) Disclosing to local taxing jurisdictions the identity of sellers granted relief under RCW 82.32.430(5)(b)(i) and the period for which relief is granted; or

(s) Disclosing such return or tax information to the court in respect to the department's application for a subpoena under RCW 82.32.115.

(4)(a) The department may disclose return or taxpayer information to a person under investigation or during any court or administrative proceeding against a person under investigation as provided in this subsection (4). The disclosure must be in connection with the department's official duties relating to an audit, collection activity, or a civil or criminal investigation. The disclosure may occur only when the person under investigation and the person in possession of data, materials, or documents are parties to the return or tax information to be disclosed. The department may disclose return or tax information such as invoices, contracts, bills, statements, resale or exemption certificates, or checks. However, the department may not disclose general ledgers, sales or cash receipt journals, check registers, accounts receivable/payable ledgers, general journals, financial statements, expert's workpapers, income tax returns, state tax returns, tax return workpapers, or other similar data, materials, or documents.

(b) Before disclosure of any tax return or tax information under this subsection (4), the department must, through written correspondence, inform the person in possession of the data, materials, or documents to be disclosed. The correspondence must clearly identify the data, materials, or documents to be disclosed. The department may not disclose any tax return or tax information under this subsection (4) until the time period allowed in (c) of this subsection has expired or until the court has ruled on any challenge brought under (c) of this subsection.

(c) The person in possession of the data, materials, or documents to be disclosed by the department has twenty days from the receipt of the written request required under (b) of this subsection to petition the superior court of the county in which the petitioner resides for injunctive relief. The court shall limit or deny the request of the department if the court determines that:

(i) The data, materials, or documents sought for disclosure are cumulative or duplicative, or are obtainable from some other source that is more convenient, less burdensome, or less expensive;

(ii) The production of the data, materials, or documents sought would be unduly burdensome or expensive, taking into account the needs of the department, the amount in controversy, limitations on the petitioner's resources, and the importance of the issues at stake; or

(iii) The data, materials, or documents sought for disclosure contain trade secret information that, if disclosed, could harm the petitioner.

(d) The department must reimburse reasonable expenses for the production of data, materials, or documents incurred by the person in possession of the data, materials, or documents to be disclosed.

(e) Requesting information under (b) of this subsection that may indicate that a taxpayer is under investigation does not constitute a disclosure of tax return or tax information under this section.

(5) Service of a subpoena issued under RCW 82.32.115 does not constitute a disclosure of return or tax information under this section. Notwithstanding anything else to the contrary in this section, a person served with a subpoena under RCW 82.32.115 may disclose the existence or content of the subpoena to that person's legal counsel.

(6) Any person acquiring knowledge of any return or tax information in the course of his or her employment with the department of revenue and any person acquiring knowledge of any return or tax information as provided under subsection (3)(f), (g), (h), (i), (j), or (n) of this section, who discloses any such return or tax information to another person not entitled to knowledge of such return or tax information under the provisions of this section, is guilty of a misdemeanor. If the person guilty of such violation is an officer or employee of the state, such person must forfeit such office or employment and is incapable of holding any public office or employment in

this state for a period of two years thereafter. [2009 c 563 § 213; 2009 c 309 § 2; 2008 c 81 § 11; 2007 c 6 § 1502; 2006 c 177 § 7. Prior: 2005 c 326 § 1; 2005 c 274 § 361; prior: 2000 c 173 § 1; 2000 c 106 § 1; 1998 c 234 § 1; 1996 c 184 § 5; 1995 c 197 § 1; 1991 c 330 § 1; 1990 c 67 § 1; 1985 c 414 § 9; 1984 c 138 § 12; 1969 ex.s. c 104 § 1; 1963 ex.s. c 28 § 10; 1961 c 15 § 82.32.330; prior: 1943 c 156 § 12; 1935 c 180 § 210; Rem. Supp. 1943 § 8370-210.]

Reviser's note: This section was amended by 2009 c 309 § 2 and by 2009 c 563 § 213, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Finding—Intent—Construction—Effective date—Reports and recommendations—2009 c 563: See notes following RCW 82.32.780.

Findings—Savings—Effective date—2008 c 81: See notes following RCW 82.08.975.

Part headings not law—Savings—Effective date—Severability—2007 c 6: See notes following RCW 82.32.020.

Findings—Intent—2007 c 6: See note following RCW 82.14.495.

Effective date—2006 c 177 §§ 1-9: See note following RCW 82.04.250.

Part headings not law—Effective date—2005 c 274: See RCW 42.56.901 and 42.56.902.

Effective date—2000 c 173: "This act takes effect July 1, 2000." [2000 c 173 § 2.]

Effective date—2000 c 106: "This act takes effect July 1, 2000." [2000 c 106 § 13.]

Effective date—1996 c 184: See note following RCW 46.16.010.

Effective date—1995 c 197: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 c 197 § 2.]

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

82.32.532 Digital products—Nexus. For purposes of the taxes imposed in this title, the department of revenue may not consider a person's ownership of, or rights in, digital goods or digital codes residing on servers located in this state in determining whether the person has substantial nexus with this state. For purposes of this section, "substantial nexus" means the requisite connection that a person has with a state to allow the state to subject the person to the state's taxing authority, consistent with the commerce clause of the United States Constitution. [2009 c 535 § 901.]

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

82.32.533 Digital products—Amnesty. (1) Except as provided in subsection (2) of this section, no person may be held liable for the failure to collect or pay state and local sales and use taxes accrued before July 26, 2009, on the sale or use of digital goods.

(2) Subsection (1) of this section does not relieve any person from liability for state and local sales taxes that the person collected from buyers but did not remit to the department of revenue.

(3) Nothing in this section may be construed as authorizing the refund of state and local sales and use taxes properly paid on the sale or use of digital goods before July 26, 2009.

(4) For purposes of this section, "digital goods" has the same meaning as in RCW 82.04.192. [2009 c 535 § 1001.]

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

82.32.560 Electrolytic processing business tax exemption—Annual report. (1) For the purposes of this section, "electrolytic processing business tax exemption" means the exemption and preferential tax rate under RCW 82.16.0421.

(2) The legislature finds that accountability and effectiveness are important aspects of setting tax policy. In order to make policy choices regarding the best use of limited state resources, the legislature needs information to evaluate whether the stated goals of legislation were achieved.

(3) The goals of the electrolytic processing business tax exemption are:

(a) To retain family wage jobs by enabling electrolytic processing businesses to maintain production of chlor-alkali and sodium chlorate at a level that will preserve at least seventy-five percent of the jobs that were on the payroll effective January 1, 2004; and

(b) To allow the electrolytic processing industries to continue production in this state so that the industries will remain competitive and be positioned to preserve and create new jobs.

(4)(a) A person who receives the benefit of an electrolytic processing business tax exemption shall make an annual report to the department detailing employment, wages, and employer-provided health and retirement benefits per job at the manufacturing site. The report is due by March 31st following any year in which a tax exemption is claimed or used. The report shall not include names of employees. The report shall detail employment by the total number of full-time, part-time, and temporary positions. The report shall indicate the quantity of product produced at the plant during the time period covered by the report. The first report filed under this subsection shall include employment, wage, and benefit information for the twelve-month period immediately before first use of a tax exemption. Employment reports shall include data for actual levels of employment and identification of the number of jobs affected by any employment reductions that have been publicly announced at the time of the report. Information in a report under this section is not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request.

(b) If a person fails to submit an annual report under (a) of this subsection by the due date of the report, the department shall declare the amount of taxes exempted for that year to be immediately due and payable. Public utility taxes payable under this subsection are subject to interest but not penalties, as provided under this chapter. This information is not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request.

(5) Pursuant to chapter 43.136 RCW, the citizen commission for performance measurement of tax preferences must schedule the electrolytic processing business tax exemption under RCW 82.16.0421 for a tax preference review by the joint legislative audit and review committee. In addition to any of the factors in RCW 43.136.055(1), the committee must also study and report on the effect of the

incentive on job retention for Washington residents, and other factors as the committee selects. The report shall also discuss expected trends or changes to electricity prices as they affect the industries that benefit from the incentives. [2009 c 434 § 2; 2004 c 240 § 2.]

82.32.590 Annual surveys or reports for tax incentives—Failure to file. (1) If the department finds that the failure of a taxpayer to file an annual survey or annual report under RCW 82.04.4452, 82.32.5351, 82.32.650, 82.32.630, 82.32.610, 82.82.020, 82.32.632, or 82.74.040 by the due date was the result of circumstances beyond the control of the taxpayer, the department shall extend the time for filing the survey or report. Such extension shall be for a period of thirty days from the date the department issues its written notification to the taxpayer that it qualifies for an extension under this section. The department may grant additional extensions as it deems proper.

(2) In making a determination whether the failure of a taxpayer to file an annual survey or annual report by the due date was the result of circumstances beyond the control of the taxpayer, the department shall be guided by rules adopted by the department for the waiver or cancellation of penalties when the underpayment or untimely payment of any tax was due to circumstances beyond the control of the taxpayer. [2009 c 461 § 7. Prior: 2008 c 81 § 13; 2008 c 15 § 7; prior: 2006 c 354 § 17; 2006 c 300 § 10; 2006 c 177 § 8; 2006 c 112 § 7; 2006 c 84 § 7; 2005 c 514 § 1001.]

Effective date—Contingent effective date—2009 c 461: See note following RCW 82.04.280.

Findings—Savings—Effective date—2008 c 81: See notes following RCW 82.08.975.

Effective date—2008 c 15: See note following RCW 82.82.010.

Effective dates—2006 c 354: See note following RCW 82.04.4268.

Effective dates—Contingent effective date—2006 c 300: See note following RCW 82.04.261.

Effective date—2006 c 177 §§ 1-9: See note following RCW 82.04.250.

Severability—2006 c 112: See RCW 28B.67.901.

Effective date—2006 c 84 §§ 2-8: See note following RCW 82.04.2404.

Findings—Intent—2006 c 84: See note following RCW 82.04.2404.

Retroactive application—2005 c 514 § 1001: "Section 1001 of this act applies retroactively to annual surveys required under RCW 82.04.4452 that are due after December 31, 2004." [2005 c 514 § 1312.]

Effective date—2005 c 514: See note following RCW 82.04.4272.

Part headings not law—Severability—2005 c 514: See notes following RCW 82.12.808.

82.32.600 Annual surveys or reports for tax incentives—Electronic filing. (1) Persons required to file annual surveys or annual reports under RCW 82.04.4452, 82.32.5351, 82.32.545, 82.32.610, 82.32.630, 82.82.020, 82.32.632, or 82.74.040 must electronically file with the department all surveys, reports, returns, and any other forms or information the department requires in an electronic format as provided or approved by the department. As used in this section, "returns" has the same meaning as "return" in RCW 82.32.050.

(2) Any survey, report, return, or any other form or information required to be filed in an electronic format under subsection (1) of this section is not filed until received by the department in an electronic format.

(3) The department may waive the electronic filing requirement in subsection (1) of this section for good cause shown. [2009 c 461 § 8. Prior: 2008 c 81 § 14; 2008 c 15 § 8; prior: 2007 c 54 § 23; 2007 c 54 § 22; prior: 2006 c 354 § 16; 2006 c 300 § 11; 2006 c 178 § 9; 2006 c 177 § 9; 2006 c 84 § 8; 2005 c 514 § 1002.]

Effective date—Contingent effective date—2009 c 461: See note following RCW 82.04.280.

Findings—Savings—Effective date—2008 c 81: See notes following RCW 82.08.975.

Effective date—2008 c 15: See note following RCW 82.82.010.

Severability—2007 c 54: See note following RCW 82.04.050.

Effective dates—2006 c 354: See note following RCW 82.04.4268.

Effective dates—Contingent effective date—2006 c 300: See note following RCW 82.04.261.

Effective date—Severability—2006 c 178: See notes following RCW 82.75.010.

Effective date—2006 c 177 §§ 1-9: See note following RCW 82.04.250.

Effective date—2006 c 84 §§ 2-8: See note following RCW 82.04.2404.

Findings—Intent—2006 c 84: See note following RCW 82.04.2404.

Effective date—2005 c 514 §§ 501 and 1002: See note following RCW 82.04.4463.

Part headings not law—Severability—2005 c 514: See notes following RCW 82.12.808.

82.32.632 Annual report for tax incentives for printing or publishing newspapers. (1)(a) Every person claiming the preferential rate provided in RCW 82.04.260(14) must file a complete annual report with the department. The report is due by March 31st of the year following any calendar year in which a person is eligible to claim the preferential rate provided in RCW 82.04.260(14). The department may extend the due date for timely filing of annual reports under this section as provided in RCW 82.32.590.

(b) The report must include information detailing employment, wages, and employer-provided health and retirement benefits for employment positions in Washington for the year that the preferential rate was claimed. The report must not include names of employees. The report must also detail employment by the total number of full-time, part-time, and temporary positions for the year that the tax preference was claimed.

(c) If a person filing a report under this section did not file a report with the department in the previous calendar year, the report filed under this section must also include employment, wage, and benefit information for the calendar year immediately preceding the calendar year for which the preferential rate provided in RCW 82.04.260(14) was claimed.

(2) As part of the annual report, the department may request additional information necessary to measure the results of, or determine eligibility for, the preferential rate provided in RCW 82.04.260(14).

(3) Other than information requested under subsection (2) of this section, the information contained in an annual report filed under this section is not subject to the confidenti-

ality provisions of RCW 82.32.330 and may be disclosed to the public upon request.

(4) Except as otherwise provided by law, if a person claims the preferential rate provided in RCW 82.04.260(14) but fails to submit a report by the due date or any extension under RCW 82.32.590, the department must declare the amount of the tax preference claimed for the previous calendar year to be immediately due and payable. The department must assess interest, but not penalties, on the amounts due under this subsection. The interest must be assessed at the rate provided for delinquent taxes under this chapter, retroactively to the date the tax preference was claimed, and accrues until the taxes for which the tax preference was claimed are repaid. Amounts due under this subsection are not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request.

(5) By November 1, 2014, and November 1, 2016, the fiscal committees of the house of representatives and the senate, in consultation with the department, must report to the legislature on the effectiveness of the preferential rate provided in RCW 82.04.260(14). The report must measure the effect of the preferential rate provided in RCW 82.04.260(14) on job retention, net jobs created for Washington residents, industry growth, and other factors as the committees select. The report must include a discussion of principles to apply in evaluating whether the legislature should continue the preferential rate provided in RCW 82.04.260(14). [2009 c 461 § 6.]

Effective date—Contingent effective date—2009 c 461: See note following RCW 82.04.280.

82.32.730 Sourcing—Streamlined sales and use tax agreement. (1) Except as provided in subsections (5) through (8) of this section, for purposes of collecting or paying sales or use taxes to the appropriate jurisdictions, all sales at retail shall be sourced in accordance with this subsection and subsections (2) through (4) of this section.

(a) When tangible personal property, an extended warranty, a digital good, digital code, digital automated service, or other service defined as a retail sale under RCW 82.04.050 is received by the purchaser at a business location of the seller, the sale is sourced to that business location.

(b) When the tangible personal property, extended warranty, digital good, digital code, digital automated service, or other service defined as a retail sale under RCW 82.04.050 is not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser or the purchaser's donee, designated as such by the purchaser, occurs, including the location indicated by instructions for delivery to the purchaser or donee, known to the seller.

(c) When (a) and (b) of this subsection do not apply, the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith.

(d) When (a), (b), and (c) of this subsection do not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith.

(e) When (a), (b), (c), or (d) of this subsection do not apply, including the circumstance where the seller is without sufficient information to apply those provisions, then the location shall be determined by the address from which tangible personal property was shipped, from which the digital good or digital code or the computer software delivered electronically was first available for transmission by the seller, or from which the extended warranty or digital automated service or other service defined as a retail sale under RCW 82.04.050 was provided, disregarding for these purposes any location that merely provided the digital transfer of the product sold.

(2) The lease or rental of tangible personal property, other than property identified in subsection (3) or (4) of this section, shall be sourced as provided in this subsection.

(a) For a lease or rental that requires recurring periodic payments, the first periodic payment is sourced the same as a retail sale in accordance with subsection (1) of this section. Periodic payments made subsequent to the first payment are sourced to the primary property location for each period covered by the payment. The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. The property location is not altered by intermittent use at different locations, such as use of business property that accompanies employees on business trips and service calls.

(b) For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with subsection (1) of this section.

(c) This subsection (2) does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis, or on the acquisition of property for lease.

(3) The lease or rental of motor vehicles, trailers, semitrailers, or aircraft that do not qualify as transportation equipment shall be sourced as provided in this subsection.

(a) For a lease or rental that requires recurring periodic payments, each periodic payment is sourced to the primary property location. The primary property location is as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. This location is not altered by intermittent use at different locations.

(b) For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with subsection (1) of this section.

(c) This subsection does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis, or on the acquisition of property for lease.

(4) The retail sale, including lease or rental, of transportation equipment shall be sourced the same as a retail sale in accordance with subsection (1) of this section.

(5)(a) This subsection applies to direct mail transactions not governed by subsection (6) of this section. A purchaser of direct mail that is not a holder of a direct pay permit shall

provide to the seller in conjunction with the purchase either a direct mail form or information that shows the jurisdictions to which the direct mail is delivered to recipients.

(i) Upon receipt of the direct mail form, the seller is relieved of all obligations to collect, pay, or remit the applicable tax and the purchaser is obligated to pay or remit the applicable tax on a direct pay basis. A direct mail form shall remain in effect for all future sales of direct mail by the seller to the purchaser until it is revoked in writing.

(ii) Upon receipt of information from the purchaser showing the jurisdictions to which the direct mail is delivered to recipients, the seller shall collect the tax according to the delivery information provided by the purchaser. In the absence of bad faith, the seller is relieved of any further obligation to collect tax on any transaction where the seller has collected tax pursuant to the delivery information provided by the purchaser.

(b) If the purchaser of direct mail does not have a direct pay permit and does not provide the seller with either a direct mail form or delivery information as required by (a) of this subsection, the seller shall collect the tax according to subsection (1)(e) of this section. This subsection does not limit a purchaser's obligation for sales or use tax to any state to which the direct mail is delivered.

(c) If a purchaser of direct mail provides the seller with documentation of direct pay authority, the purchaser is not required to provide a direct mail form or delivery information to the seller.

(6)(a) This subsection applies only with respect to transactions in which direct mail is delivered or distributed from a location within this state to a location within this state. If the purchaser of direct mail provides the seller with a direct pay permit or an exemption certificate claiming direct mail, the seller is relieved of all obligations to collect, pay, or remit the applicable tax and the purchaser is obligated to pay or remit the applicable tax on a direct pay basis. An exemption certificate claiming direct mail will remain in effect for all future sales of direct mail by the seller to the purchaser until it is revoked in writing.

(b)(i) Except as provided in (b)(ii) of this subsection (6), if the purchaser of direct mail does not provide the seller with a direct pay permit or an exemption certificate claiming direct mail, the seller must collect the tax according to subsection (1)(e) of this section.

(ii) To the extent the seller knows that a portion of the sale of direct mail will be delivered or distributed to locations in another state, the seller must collect the tax on that portion according to subsection (5) of this section.

(7) The following are sourced to the location at or from which delivery is made to the consumer:

(a) A retail sale of watercraft;

(b) A retail sale of a modular home, manufactured home, or mobile home;

(c) A retail sale, excluding the lease and rental, of a motor vehicle, trailer, semitrailer, or aircraft, that do not qualify as transportation equipment; and

(d) Florist sales. In the case of a sale in which one florist takes an order from a customer and then communicates that order to another florist who delivers the items purchased to the place designated by the customer, the location at or from which the delivery is made to the consumer is deemed to be the location of the florist originally taking the order.

(8)(a) A retail sale of the providing of telecommunications services, as that term is defined in RCW 82.04.065, is sourced in accordance with RCW 82.32.520.

(b) A retail sale of the providing of ancillary services, as that term is defined in RCW 82.04.065, is sourced to the customer's place of primary use of the telecommunications services in respect to which the ancillary services are associated with or incidental to. The definitions of "customer" and "place of primary use" in RCW 82.32.520 apply to this subsection (8)(b).

(9) The definitions in this subsection apply throughout this section.

(a) "Delivered electronically" means delivered to the purchaser by means other than tangible storage media.

(b) "Direct mail" means printed material delivered or distributed by United States mail or other delivery service to a mass audience or to addressees on a mailing list provided by the purchaser or at the direction of the purchaser when the cost of the items are not billed directly to the recipients. "Direct mail" includes tangible personal property supplied directly or indirectly by the purchaser to the direct mail seller for inclusion in the package containing the printed material. "Direct mail" does not include multiple items of printed material delivered to a single address.

(c) "Florist sales" means the retail sale of tangible personal property by a florist. For purposes of this subsection (9)(c), "florist" means a person whose primary business activity is the retail sale of fresh cut flowers, potted ornamental plants, floral arrangements, floral bouquets, wreaths, or any similar products, used for decorative and not landscaping purposes.

(d) "Receive" and "receipt" mean taking possession of tangible personal property, making first use of digital automated services or other services, or taking possession or making first use of digital goods or digital codes, whichever comes first. "Receive" and "receipt" do not include possession by a shipping company on behalf of the purchaser.

(e) "Transportation equipment" means:

(i) Locomotives and railcars that are used for the carriage of persons or property in interstate commerce;

(ii) Trucks and truck tractors with a gross vehicle weight rating of ten thousand one pounds or greater, trailers, semitrailers, or passenger buses that are:

(A) Registered through the international registration plan; and

(B) Operated under authority of a carrier authorized and certificated by the United States department of transportation or another federal authority to engage in the carriage of persons or property in interstate commerce;

(iii) Aircraft that are operated by air carriers authorized and certificated by the United States department of transportation or another federal or foreign authority to engage in the carriage of persons or property in interstate or foreign commerce; or

(iv) Containers designed for use on and component parts attached or secured on the items described in (e)(i) through (iii) of this subsection.

(10) In those instances where there is no obligation on the part of a seller to collect or remit this state's sales or use

tax, the use of tangible personal property, digital good, digital code, or of a digital automated service or other service, subject to use tax, is sourced to the place of first use in this state. The definition of use in RCW 82.12.010 applies to this subsection. [2009 c 535 § 704; 2009 c 289 § 1; 2008 c 324 § 1; 2007 c 6 § 501.]

Reviser's note: This section was amended by 2009 c 289 § 1 and by 2009 c 535 § 704, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Effective date—2008 c 324: "This act takes effect July 1, 2008." [2008 c 324 § 2.]

Part headings not law—Savings—Effective date—Severability—2007 c 6: See notes following RCW 82.32.020.

Findings—Intent—2007 c 6: See note following RCW 82.14.495.

82.32.765 Local revitalization financing—Reporting requirements. (1) A sponsoring local government receiving a project award under RCW 39.104.100 must provide a report to the department by March 1st of each year beginning March 1st after the project award has been approved. The report must contain the following information:

(a) The amounts of local property tax allocation revenues received in the preceding calendar year broken down by sponsoring local government and participating taxing district;

(b) The amount of state property tax allocation revenues estimated to have been received by the state in the preceding calendar year;

(c) The amount of local sales and use tax and other revenue from local public sources dedicated by any participating local government used for the payment of bonds under RCW 39.104.110 and public improvement costs within the revitalization area on a pay-as-you-go basis in the preceding calendar year;

(d) The amount of local sales and use tax dedicated by the sponsoring local government, as it relates to the sponsoring local government's local sales and use tax increment, used for the payment of bonds under RCW 39.104.110 and public improvement costs within the revitalization area on a pay-as-you-go basis;

(e) The amounts, other than those listed in (a) through (d) of this subsection, from local public sources, broken down by type or source, used for payment of bonds under RCW 39.104.110 or public improvement costs within the revitalization area on a pay-as-you-go basis in the preceding calendar year;

(f) The anticipated date when bonds under RCW 39.104.110 are expected to be retired;

(g) The names of any businesses locating within the revitalization area as a result of the public improvements undertaken by the sponsoring local government and financed in whole or in part with local revitalization financing;

(h) An estimate of the cumulative number of permanent jobs created in the revitalization area as a result of the public improvements undertaken by the sponsoring local government and financed in whole or in part with local revitalization financing;

(i) An estimate of the average wages and benefits received by all employees of businesses locating within the revitalization area as a result of the public improvements undertaken by the sponsoring local government and financed in whole or in part with local revitalization financing;

(j) A list of public improvements financed by bonds issued under RCW 39.104.110 and the date on which the bonds are anticipated to be retired;

(k) That the sponsoring local government is in compliance with RCW 39.104.030;

(l) At least once every three years, updated estimates of the amounts of state and local sales and use tax increments estimated to have been received since the approval by the department of the project award under RCW 39.104.100; and

(m) Any other information required by the department to enable the department to fulfill its duties under this chapter and RCW 82.14.510.

(2) The department shall make a report available to the public and the legislature by June 1st of each year. The report shall include a summary of the information provided to the department by sponsoring local governments under subsection (1) of this section. [2009 c 270 § 501.]

82.32.770 Sourcing compliance—Tax payer relief—Collection and remittance errors. (1) Notwithstanding any other provision in this chapter, no interest or penalties may be imposed on any taxpayer because of errors in collecting or remitting the correct amount of local sales or use tax arising out of changes in local sales and use tax sourcing rules implemented under RCW 82.14.490 and section 502, chapter 6, Laws of 2007 if the taxpayer demonstrates that it made a good faith effort to comply with the sourcing rules.

(2) The relief from penalty and interest provided by subsection (1) of this section only applies to taxpayers with a gross income of the business of less than five hundred thousand dollars in the prior calendar year.

(3) The relief from penalty and interest provided by subsection (1) of this section does not apply with respect to sales occurring after December 31, 2012. [2009 c 289 § 5.]

82.32.780 Seller's permit—Taxpayer application. ***(Effective January 1, 2010.)*** (1) Taxpayers seeking a new seller's permit or to renew or reinstate a seller's permit, other than taxpayers subject to the provisions of RCW 82.32.783, must apply to the department in a form and manner prescribed by the department. The department must rule on applications within sixty days of receiving a complete application. An application must be denied if the department determines that, based on the nature of the applicant's business, the applicant is not entitled to make purchases at wholesale or is otherwise prohibited from using a seller's permit. The department may also deny an application if it determines that denial would be in the best interest of collecting taxes due under this title. The department's decision whether to approve or deny an application may be based on tax returns previously filed with the department by the applicant, a current or previous examination of the applicant's books and records by the department, information provided by the applicant in the master application and the seller's permit application, and other information available to the department.

(2) Notwithstanding subsection (1) of this section, the department may issue a seller's permit to a taxpayer that has not applied for the permit if it appears to the department's satisfaction, based on the nature of the taxpayer's business activities and any other information available to the department, that the taxpayer is entitled to make purchases at wholesale.

(3) Seller's permits issued by the department will be in a form prescribed by the department, which may include an electronic form, and must contain a unique identifying number assigned by the department.

(4)(a) Except as otherwise provided in this section, seller's permits issued, renewed, or reinstated under this section will be valid for a period of forty-eight months from the date of issuance, renewal, or reinstatement.

(b) A seller's permit issued to taxpayers who register with the department under RCW 82.32.030 after January 1, 2009, is valid for a period of twenty-four months and may be renewed for the period prescribed in (a) of this subsection (4).

(c) A seller's permit is no longer valid if the permit holder's certificate of registration is revoked by the department or the person otherwise ceases to engage in business.

(5)(a) The department may revoke a seller's permit of a taxpayer for any of the following reasons:

(i) The taxpayer used or allowed or caused its seller's permit to be used to purchase any item or service without payment of sales tax, but the taxpayer or other purchaser was not entitled to use the seller's permit for the purchase;

(ii) The department issued the seller's permit to the taxpayer in error;

(iii) The department determines that the taxpayer is no longer entitled to make purchases at wholesale; or

(iv) The department determines that revocation of the seller's permit would be in the best interest of collecting taxes due under this title.

(b) The notice of revocation must be in writing and is effective on the date specified in the revocation notice. The notice must also advise the taxpayer of its right to a review by the department.

(c) The department may refuse to reinstate a seller's permit revoked under (a)(i) of this subsection until all taxes, penalties, and interest due on any improperly purchased item or service have been paid in full. In the event a taxpayer whose seller's permit has been revoked under this subsection reorganizes, the new business resulting from the reorganization is not entitled to a seller's permit until all taxes, penalties, and interest due on any improperly purchased item or service have been paid in full.

(d) For purposes of this subsection, "reorganize" or "reorganization" means: (i) The transfer, however effected, of a majority of the assets of one business to another business where any of the persons having an interest in the ownership or management in the former business maintain an ownership or management interest in the new business, either directly or indirectly; (ii) a mere change in identity or form of ownership, however effected; or (iii) the new business is a mere continuation of the former business based on significant shared features such as owners, personnel, assets, or general business activity.

(6) The department may provide lists of valid and revoked seller's permit numbers on its web site.

(7) The department must provide by rule for the review of the department's decision to deny, revoke, or refuse to reinstate a seller's permit. Such review must be consistent with the requirements of chapter 34.05 RCW.

(8) As part of its continuing efforts to educate taxpayers on their sales and use tax responsibilities, the department will educate taxpayers on the appropriate use of a seller's permit or uniform exemption certificate authorized under RCW 82.04.470 and the consequences of misusing such permits or exemption certificates. [2009 c 563 § 201.]

Finding—Intent—2009 c 563: "The legislature finds that the department of revenue's 2008 compliance study estimates that sales tax noncompliance exceeds well over one hundred million dollars annually in unpaid state and local sales and use taxes.

The legislature intends to address this significant problem by eliminating the use of resale certificates to document wholesale purchases. Resale certificates will be replaced with seller's permits, which will be issued by the department of revenue only to those businesses that make wholesale purchases, such as retailers, wholesalers, manufacturers, and qualified contractors. Businesses that do not make wholesale purchases, such as most service businesses, will not be entitled to a seller's permit." [2009 c 563 § 101.]

Construction—2009 c 563: "This act must be liberally construed in order to carry out its purposes." [2009 c 563 § 402.]

Effective date—2009 c 563: "This act takes effect January 1, 2010." [2009 c 563 § 403.]

Reports and recommendations—2009 c 563: "By December 1, 2009, the finance committee of the house of representatives and the joint legislative task force on the underground economy in the Washington state construction industry, shall each prepare a report that reviews the issues and concerns that need to be addressed by the legislature as a result of the changes made in this act. The reports shall include any recommendations on potential modifications to the provisions of this act. The department of revenue shall provide necessary support and information." [2009 c 563 § 405.]

Construction—2009 c 563: "The effective date in section 403 of this act may not be construed as preventing the department of revenue from accepting applications for, or issuing, seller's permits before January 1, 2010, adopting rules, or taking any other action before January 1, 2010, necessary to ensure the effective implementation of this act." [2009 c 563 § 404.]

82.32.783 Seller's permit—Contractor application. ***(Effective January 1, 2010.)*** (1)(a) Contractors seeking a new seller's permit or to renew or reinstate a seller's permit must apply to the department in a form and manner prescribed by the department.

(b) As part of the application, the contractor must report the dollar amount of all purchases of materials and labor during the preceding twelve months for retail construction activity, speculative building, public road construction, and government contracting. If the contractor was not engaged in business as a contractor during the preceding twelve months, the contractor may provide an estimate of the dollar amount of purchases of materials and labor for retail construction activity, speculative building, public road construction, and government contracting during the twelve-month period for which the seller's permit will be valid.

(c) The department must rule on applications within sixty days of receiving a complete application.

(d)(i) An application must be denied if:

(A) The department determines that the applicant is not entitled to make purchases at wholesale;

(B) The application contains any material misstatement;

(C) The application is incomplete; or

(D) Less than twenty-five percent of the taxpayer's total dollar amount of actual or, if applicable, estimated material

and labor purchases as reported on the application is for retail construction activity performed by the applicant. However, the department may approve an application not meeting the criteria in this subsection (1)(d)(i)(D) if the department is satisfied that approval is unlikely to jeopardize collection of the taxes due under this title.

(ii) The department may also deny an application if the department determines that denial would be in the best interest of collecting taxes due under this title.

(e) Applications to renew a seller's permit may not be made more than ninety days before the expiration of the seller's permit.

(2) Sellers' permits issued by the department will be in a form prescribed by the department, which may include an electronic form, and must contain a unique identifying number assigned by the department.

(3)(a) Sellers' permits issued, renewed, or reinstated under this section will be valid for a period of twelve months from the date of issuance, renewal, or reinstatement.

(b) A seller's permit is no longer valid if the permit holder's certificate of registration is revoked by the department or the person otherwise ceases to engage in business.

(4)(a) The department may revoke a seller's permit of a contractor for any of the following reasons:

(i) The contractor used or allowed or caused its seller's permit to be used to purchase any item or service without payment of sales tax, but the contractor or other purchaser was not entitled to use the seller's permit for the purchase;

(ii) The department issued the seller's permit to the contractor in error;

(iii) The department determines that the contractor is no longer entitled to make purchases at wholesale; or

(iv) The department determines that revocation of the seller's permit would be in the best interest of collecting taxes due under this title.

(b) The notice of revocation must be in writing and is effective on the date specified in the revocation notice. The notice must also advise the contractor of its right to a review by the department.

(c) The department may refuse to reinstate a seller's permit revoked under (a)(i) of this subsection until all taxes, penalties, and interest due on any improperly purchased item or service have been paid in full. In the event a contractor whose seller's permit has been revoked under this subsection reorganizes, the new business resulting from the reorganization is not entitled to a seller's permit until all taxes, penalties, and interest due on any improperly purchased item or service have been paid in full.

(d) For purposes of this subsection, "reorganize" or "reorganization" means: (i) The transfer, however effected, of a majority of the assets of one business to another business where any of the persons having an interest in the ownership or management in the former business maintain an ownership or management interest in the new business, either directly or indirectly; (ii) a mere change in identity or form of ownership, however effected; or (iii) the new business is a mere continuation of the former business based on significant shared features such as owners, personnel, assets, or general business activity.

(5) The department may provide lists of valid and revoked sellers' permit numbers on its web site.

(6) The department must provide by rule for the review of the department's decision to deny, revoke, or refuse to reinstate a seller's permit. Such review must be consistent with the requirements of chapter 34.05 RCW.

(7) As part of its continuing efforts to educate taxpayers on their sales and use tax responsibilities, the department will educate taxpayers on the appropriate use of a seller's permit or uniform exemption certificate authorized under RCW 82.04.470 and the consequences of misusing such permits or exemption certificates.

(8) As used in this section, the following definitions apply:

(a) "Contractor" means a person who engages in any retail construction activity, or who engages in any activity that brings the person within the definition of consumer in RCW 82.04.190 (3) or (6), or who is a speculative builder as defined by rule of the department.

(b) "Government contracting" means the activity described in RCW 82.04.190(6).

(c) "Public road construction" means the activity described in RCW 82.04.190(3).

(d) "Retail construction activity" means any activity defined as a retail sale in RCW 82.04.050(2) (b) or (c).

(e) "Speculative building" means the activities of a speculative builder as the term "speculative builder" is defined by rule of the department. [2009 c 563 § 202.]

Finding—Intent—Construction—Effective date—Reports and recommendations—2009 c 563: See notes following RCW 82.32.780.

82.32.785 Seller's permit—Voluntary electronic verification. ***(Effective January 1, 2010.)*** The department of revenue must, by January 1, 2011, develop a system, as resources permit, allowing sellers to voluntarily verify through electronic means the validity of sellers' permits presented to sellers from their customers. [2009 c 563 § 203.]

Finding—Intent—Construction—Effective date—Reports and recommendations—2009 c 563: See notes following RCW 82.32.780.

82.32.787 Seller's permit—Request for copies. ***(Effective January 1, 2010.)*** A person must, upon request of the department, provide the department with a copy of all sellers' permits, or uniform exemption certificates as authorized in RCW 82.04.470, accepted by that person during the period specified by the department. [2009 c 563 § 204.]

Finding—Intent—Construction—Effective date—Reports and recommendations—2009 c 563: See notes following RCW 82.32.780.

Chapter 82.38 RCW
SPECIAL FUEL TAX ACT

Sections

82.38.080 Exemptions.

82.38.080 Exemptions. (1) There is exempted from the tax imposed by this chapter, the use of fuel for:

(a) Street and highway construction and maintenance purposes in motor vehicles owned and operated by the state of Washington, or any county or municipality;

(b) Publicly owned firefighting equipment;

(c) Special mobile equipment as defined in RCW 46.04.552;

(d) Power pumping units or other power take-off equipment of any motor vehicle which is accurately measured by metering devices that have been specifically approved by the department or which is established by any of the following formulae:

(i) Pumping propane, or fuel or heating oils or milk picked up from a farm or dairy farm storage tank by a power take-off unit on a delivery truck, at a rate determined by the department: PROVIDED, That claimant when presenting his or her claim to the department in accordance with this chapter, shall provide to the claim, invoices of propane, or fuel or heating oil delivered, or such other appropriate information as may be required by the department to substantiate his or her claim;

(ii) Operating a power take-off unit on a cement mixer truck or a load compactor on a garbage truck at the rate of twenty-five percent of the total gallons of fuel used in such a truck; or

(iii) The department is authorized to establish by rule additional formulae for determining fuel usage when operating other types of equipment by means of power take-off units when direct measurement of the fuel used is not feasible. The department is also authorized to adopt rules regarding the usage of on board computers for the production of records required by this chapter;

(e) Motor vehicles owned and operated by the United States government;

(f) Heating purposes;

(g) Moving a motor vehicle on a public highway between two pieces of private property when said moving is incidental to the primary use of the motor vehicle;

(h) Transportation services for persons with special transportation needs by a private, nonprofit transportation provider regulated under chapter 81.66 RCW;

(i) Vehicle refrigeration units, mixing units, or other equipment powered by separate motors from separate fuel tanks;

(j) The operation of a motor vehicle as a part of or incidental to logging operations upon a highway under federal jurisdiction within the boundaries of a federal area if the federal government requires a fee for the privilege of operating the motor vehicle upon the highway, the proceeds of which are reserved for constructing or maintaining roads in the federal area, or requires maintenance or construction work to be performed on the highway for the privilege of operating the motor vehicle on the highway; and

(k) Waste vegetable oil as defined under RCW 82.08.0205 if the oil is used to manufacture biodiesel.

(2) There is exempted from the tax imposed by this chapter the removal or entry of special fuel under the following circumstances and conditions:

(a) If it is the removal from a terminal or refinery of, or the entry or sale of, a special fuel if all of the following apply:

(i) The person otherwise liable for the tax is a licensee other than a dyed special fuel user or international fuel tax agreement licensee;

(ii) For a removal from a terminal, the terminal is a licensed terminal; and

(iii) The special fuel satisfies the dyeing and marking requirements of this chapter;

(b) If it is an entry or removal from a terminal or refinery of taxable special fuel transferred to a refinery or terminal and the persons involved, including the terminal operator, are licensed; and

(c)(i) If it is a special fuel that, under contract of sale, is shipped to a point outside this state by a supplier by means of any of the following:

(A) Facilities operated by the supplier;

(B) Delivery by the supplier to a carrier, customs broker, or forwarding agent, whether hired by the purchaser or not, for shipment to the out-of-state point;

(C) Delivery by the supplier to a vessel clearing from port of this state for a port outside this state and actually exported from this state in the vessel.

(ii) For purposes of this subsection (2)(c):

(A) "Carrier" means a person or firm engaged in the business of transporting for compensation property owned by other persons, and includes both common and contract carriers; and

(B) "Forwarding agent" means a person or firm engaged in the business of preparing property for shipment or arranging for its shipment.

(3)(a) Notwithstanding any provision of law to the contrary, every privately owned urban passenger transportation system and carriers as defined by chapters 81.68 and 81.70 RCW shall be exempt from the provisions of this chapter requiring the payment of special fuel taxes. For the purposes of this section "privately owned urban passenger transportation system" means every privately owned transportation system having as its principal source of revenue the income from transporting persons for compensation by means of motor vehicles or trackless trolleys, each having a seating capacity for over fifteen persons over prescribed routes in such a manner that the routes of such motor vehicles or trackless trolleys, either alone or in conjunction with routes of other such motor vehicles or trackless trolleys subject to routing by the same transportation system, shall not extend for a distance exceeding twenty-five road miles beyond the corporate limits of the county in which the original starting points of such motor vehicles are located: PROVIDED, That no refunds or credits shall be granted on special fuel used by any privately owned urban transportation vehicle, or vehicle operated pursuant to chapters 81.68 and 81.70 RCW, on any trip where any portion of the trip is more than twenty-five road miles beyond the corporate limits of the county in which the trip originated.

(b) Every publicly owned and operated urban passenger transportation system is exempt from the provisions of this chapter that require the payment of special fuel taxes. For the purposes of this subsection, "publicly owned and operated urban passenger transportation systems" include public transportation benefit areas under chapter 36.57A RCW, metropolitan municipal corporations under chapter 36.56 RCW, city-owned transit systems under chapter 35.58 RCW, county public transportation authorities under chapter 36.57 RCW, unincorporated transportation benefit areas under chapter 36.57 RCW, and regional transit authorities under chapter 81.112 RCW. [2009 c 352 § 1; 2008 c 237 § 1; 1998 c 176 § 60; 1996 c 244 § 6; 1993 c 141 § 2; 1990 c 185 § 1; 1983 c

108 § 4; 1979 c 40 § 4; 1973 c 42 § 1. Prior: 1972 ex.s. c 138 § 2; 1972 ex.s. c 49 § 1; 1971 ex.s. c 175 § 9.]

Effective date—2008 c 237: See note following RCW 82.08.0205.

Effective date—1972 ex.s. c 138: See note following RCW 82.36.280.

Chapter 82.45 RCW
EXCISE TAX ON REAL ESTATE SALES

Sections

82.45.090 Payment of tax and fee—Evidence of payment—Recording—Sale of beneficial interest.
82.45.180 Disposition of proceeds.

82.45.090 Payment of tax and fee—Evidence of payment—Recording—Sale of beneficial interest. (1) Except for a sale of a beneficial interest in real property where no instrument evidencing the sale is recorded in the official real property records of the county in which the property is located, the tax imposed by this chapter shall be paid to and collected by the treasurer of the county within which is located the real property which was sold. In collecting the tax the treasurer shall act as agent for the state. The county treasurer shall cause a verification of payment evidencing satisfaction of the lien to be affixed to the instrument of sale or conveyance prior to its recording or to the real estate excise tax affidavit in the case of used mobile home sales and used floating home sales. A receipt issued by the county treasurer for the payment of the tax imposed under this chapter shall be evidence of the satisfaction of the lien imposed hereunder and may be recorded in the manner prescribed for recording satisfactions of mortgages. No instrument of sale or conveyance evidencing a sale subject to the tax shall be accepted by the county auditor for filing or recording until the tax shall have been paid and the verification of payment affixed thereto; in case the tax is not due on the transfer, the instrument shall not be so accepted until suitable notation of such fact has been made on the instrument by the treasurer. Any time there is a sale of a used mobile home, used manufactured home, used park model, or used floating home that has not been title eliminated, property taxes must be current in order to complete the processing of the real estate excise tax affidavit or other documents transferring title. Verification that the property taxes are current must be noted on the mobile home real estate excise tax affidavit or on a form approved by the county treasurer. For the purposes of this subsection, "mobile home," "manufactured home," and "park model" have the same meaning as provided in RCW 59.20.030.

(2) For a sale of a beneficial interest in real property where a tax is due under this chapter and where no instrument is recorded in the official real property records of the county in which the property is located, the sale shall be reported to the department of revenue within five days from the date of the sale on such returns or forms and according to such procedures as the department may prescribe. Such forms or returns shall be signed by both the transferor and the transferee and shall be accompanied by payment of the tax due.

(3) Any person who intentionally makes a false statement on any return or form required to be filed with the department under this chapter is guilty of perjury under chapter 9A.72 RCW. [2009 c 350 § 8; 2003 c 53 § 404; 1993 sp.s. c 25 § 506; 1991 c 327 § 6; 1990 c 171 § 7; 1984 c 192 § 2; 1980 c 154 § 4; 1979 ex.s. c 266 § 2; 1969 ex.s. c 223 § 28A.45.090. Prior: 1951 2nd ex.s. c 19 § 4; 1951 1st ex.s. c 11 § 11. Formerly RCW 28A.45.090, 28.45.090.]

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

Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25: See notes following RCW 82.04.230.

Findings—Intent—1993 sp.s. c 25: See note following RCW 82.45.010.

Effective date—1990 c 171 §§ 6, 7, 8: "Sections 6, 7, and 8 of this act shall take effect July 1, 1990." [1990 c 171 § 11.]

Purpose—Effective dates—Savings—Disposition of certain funds—Severability—1980 c 154: See notes following chapter digest.

82.45.180 Disposition of proceeds. (1)(a) For taxes collected by the county under this chapter, the county treasurer shall collect a five-dollar fee on all transactions required by this chapter where the transaction does not require the payment of tax. A total of five dollars shall be collected in the form of a tax and fee, where the calculated tax payment is less than five dollars. Through June 30, 2006, the county treasurer shall place one percent of the taxes collected by the county under this chapter and the treasurer's fee in the county current expense fund to defray costs of collection. After June 30, 2006, the county treasurer shall place one and three-tenths percent of the taxes collected by the county under this chapter and the treasurer's fee in the county current expense fund to defray costs of collection. For taxes collected by the county under this chapter before July 1, 2006, the county treasurer shall pay over to the state treasurer and account to the department of revenue for the proceeds at the same time the county treasurer remits funds to the state under RCW 84.56.280. For taxes collected by the county under this chapter after June 30, 2006, on a monthly basis the county treasurer shall pay over to the state treasurer the month's transmittal. The month's transmittal must be received by the state treasurer by 12:00 p.m. on the last working day of each month. The county treasurer shall account to the department for the month's transmittal by the twentieth day of the month following the month in which the month's transmittal was paid over to the state treasurer. The state treasurer shall deposit the proceeds in the general fund.

(b) For purposes of this subsection, the definitions in this subsection apply.

(i) "Close of business" means the time when the county treasurer makes his or her daily deposit of proceeds.

(ii) "Month's transmittal" means all proceeds deposited by the county through the close of business of the day that is two working days before the last working day of the month. This definition of "month's transmittal" shall not be construed as requiring any change in a county's practices regarding the timing of its daily deposits of proceeds.

(iii) "Proceeds" means moneys collected and receipted by the county from the taxes imposed by this chapter, less the county's share of the proceeds used to defray the county's costs of collection allowable in (a) of this subsection.

(iv) "Working day" means a calendar day, except Saturdays, Sundays, and all legal holidays as provided in RCW 1.16.050.

(2) For taxes collected by the department of revenue under this chapter, the department shall remit the tax to the

state treasurer who shall deposit the proceeds of any state tax in the general fund. The state treasurer shall deposit the proceeds of any local taxes imposed under chapter 82.46 RCW in the local real estate excise tax account hereby created in the state treasury. Moneys in the local real estate excise tax account may be spent only for distribution to counties, cities, and towns imposing a tax under chapter 82.46 RCW. Except as provided in RCW 43.08.190, all earnings of investments of balances in the local real estate excise tax account shall be credited to the local real estate excise tax account and distributed to the counties, cities, and towns monthly. Monthly the state treasurer shall make distribution from the local real estate excise tax account to the counties, cities, and towns the amount of tax collected on behalf of each taxing authority. The state treasurer shall make the distribution under this subsection without appropriation.

(3)(a) The real estate excise tax electronic technology account is created in the custody of the state treasurer. An appropriation is not required for expenditures and the account is not subject to allotment procedures under chapter 43.88 RCW.

(b) Through June 30, 2010, the county treasurer shall collect an additional five-dollar fee on all transactions required by this chapter, regardless of whether the transaction requires the payment of tax. The county treasurer shall remit this fee to the state treasurer at the same time the county treasurer remits funds to the state under subsection (1) of this section. The state treasurer shall place money from this fee in the real estate excise tax electronic technology account. By the twentieth day of the subsequent month, the state treasurer shall distribute to each county treasurer according to the following formula: Three-quarters of the funds available shall be equally distributed among the thirty-nine counties; and the balance shall be ratably distributed among the counties in direct proportion to their population as it relates to the total state's population based on most recent statistics by the office of financial management.

(c) When received by the county treasurer, the funds shall be placed in a special real estate excise tax electronic technology fund held by the county treasurer to be used exclusively for the development, implementation, and maintenance of an electronic processing and reporting system for real estate excise tax affidavits. Funds may be expended to make the system compatible with the automated real estate excise tax system developed by the department and compatible with the processes used in the offices of the county assessor and county auditor. Any funds held in the account that are not expended by the earlier of: July 1, 2015, or at such time that the county treasurer is utilizing an electronic processing and reporting system for real estate excise tax affidavits compatible with the department and compatible with the processes used in the offices of the county assessor and county assessor [auditor], revert to the special real estate and property tax administration assistance account in accordance with subsection (5)(c) of this section.

(4) Beginning July 1, 2010, through December 31, 2013, the county treasurer shall continue to collect the additional five-dollar fee in subsection (3) of this section on all transactions required by this chapter, regardless of whether the transaction requires the payment of tax. During this period, the county treasurer shall remit this fee to the state treasurer at the same time the county treasurer remits funds to the state under subsection (1) of this section. The state treasurer shall place money from this fee in the annual property revaluation grant account created in RCW 84.41.170.

(5)(a) The real estate and property tax administration assistance account is created in the custody of the state treasurer. An appropriation is not required for expenditures and the account is not subject to allotment procedures under chapter 43.88 RCW.

(b) Beginning January 1, 2014, the county treasurer must continue to collect the additional five-dollar fee in subsection (3) of this section on all transactions required by this chapter, regardless of whether the transaction requires the payment of tax. The county treasurer shall deposit one-half of this fee in the special real estate and property tax administration assistance account in accordance with (c) of this subsection and remit the balance to the state treasurer at the same time the county treasurer remits funds to the state under subsection (1) of this section. The state treasurer must place money from this fee in the real estate and property tax administration assistance account. By the twentieth day of the subsequent month, the state treasurer must distribute the funds to each county treasurer according to the following formula: One-half of the funds available must be equally distributed among the thirty-nine counties; and the balance must be ratably distributed among the counties in direct proportion to their population as it relates to the total state's population based on most recent statistics by the office of financial management.

(c) When received by the county treasurer, the funds must be placed in a special real estate and property tax administration assistance account held by the county treasurer to be used for:

(i) Maintenance and operation of an annual revaluation system for property tax valuation; and

(ii) Maintenance and operation of an electronic processing and reporting system for real estate excise tax affidavits. [2009 c 308 § 5; 2006 c 312 § 1. Prior: 2005 c 486 § 2; 2005 c 480 § 2; 1998 c 106 § 11; 1993 sp.s. c 25 § 510; 1991 c 245 § 15; 1982 c 176 § 2; 1981 c 167 § 3; 1980 c 154 § 6.]

Effective date—Severability—2006 c 312: See notes following RCW 82.45.210.

Purpose—2005 c 486: "Over the past decade, traditional school construction funding sources, such as timber revenues, have been declining, while the demand for school facility construction and improvements have been increasing. Washington's youth deserve safe, healthy, and supportive learning environments to help meet their educational needs. To increase state assistance for local school construction projects, the legislature expects to rely more on state bonding authority. The purpose of this act is to expand the constitutional definition of general state revenues by removing the dedication of a portion of the real estate excise tax for common schools. Nothing in this act is intended to affect the state's current efforts to support common schools in the state's omnibus appropriations act." [2005 c 486 § 1.]

Intent—Findings—Effective date—2005 c 480: See notes following RCW 82.45.210.

Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25: See notes following RCW 82.04.230.

Findings—Intent—1993 sp.s. c 25: See note following RCW 82.45.010.

Audits, assessments, and refunds—1982 c 176: See note following chapter digest.

Effective date—1981 c 167: See note following RCW 82.45.150.

Purpose—Effective dates—Savings—Disposition of certain funds—Severability—1980 c 154: See notes following chapter digest.

Chapter 82.46 RCW

COUNTIES AND CITIES— EXCISE TAX ON REAL ESTATE SALES

Sections

82.46.035 Additional tax—Certain counties and cities—Ballot proposition—Use limited to capital projects—Temporary rescindment for noncompliance. *(Effective until June 30, 2012.)*

82.46.035 Additional tax—Certain counties and cities—Ballot proposition—Use limited to capital projects—Temporary rescindment for noncompliance. ***(Effective until June 30, 2012.)*** (1) The legislative authority of any county or city shall identify in the adopted budget the capital projects funded in whole or in part from the proceeds of the tax authorized in this section, and shall indicate that such tax is intended to be in addition to other funds that may be reasonably available for such capital projects.

(2) The legislative authority of any county or any city that plans under RCW 36.70A.040(1) may impose an additional excise tax on each sale of real property in the unincorporated areas of the county for the county tax and in the corporate limits of the city for the city tax at a rate not exceeding one-quarter of one percent of the selling price. Any county choosing to plan under RCW 36.70A.040(2) and any city within such a county may only adopt an ordinance imposing the excise tax authorized by this section if the ordinance is first authorized by a proposition approved by a majority of the voters of the taxing district voting on the proposition at a general election held within the district or at a special election within the taxing district called by the district for the purpose of submitting such proposition to the voters.

(3) Revenues generated from the tax imposed under subsection (2) of this section shall be used by such counties and cities solely for financing capital projects specified in a capital facilities plan element of a comprehensive plan. However, revenues (a) pledged by such counties and cities to debt retirement prior to March 1, 1992, may continue to be used for that purpose until the original debt for which the revenues were pledged is retired, or (b) committed prior to March 1, 1992, by such counties or cities to a project may continue to be used for that purpose until the project is completed.

(4) Revenues generated by the tax imposed by this section shall be deposited in a separate account.

(5) As used in this section: (a) "City" means any city or town; (b) "capital project" means those public works projects of a local government for planning, acquisition, construction, reconstruction, repair, replacement, rehabilitation, or improvement of streets, roads, highways, sidewalks, street and road lighting systems, traffic signals, bridges, municipally owned heavy rail short line railroads, domestic water systems, storm and sanitary sewer systems, and planning, construction, reconstruction, repair, rehabilitation, or improvement of parks; and (c) "short line railroads" means class III railroads as defined by the United States surface transportation board.

(6) When the governor files a notice of noncompliance under RCW 36.70A.340 with the secretary of state and the appropriate county or city, the county or city's authority to impose the additional excise tax under this section shall be temporarily rescinded until the governor files a subsequent notice rescinding the notice of noncompliance.

(7) A city or county may use revenue generated under subsection (2) of this section for municipally owned heavy short line railroads only if the revenue was collected prior to December 31, 2008, and may not use more than twenty-five percent of the total revenue generated under subsection (2) of this section for municipally owned heavy short line railroads. [2009 c 211 § 1. Prior: 1992 c 221 § 3; 1991 sp.s. c 32 § 33; 1990 1st ex.s. c 17 § 38.]

Expiration date—2009 c 211: "This act expires June 30, 2012." [2009 c 211 § 2.]

Sections headings not law—1991 sp.s. c 32: See RCW 36.70A.902.

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

Chapter 82.63 RCW

TAX DEFERRALS FOR HIGH TECHNOLOGY BUSINESSES

Sections

82.63.010 Definitions.
82.63.020 Application—Annual survey—Reports.
82.63.045 Repayment not required—Repayment schedule for unqualified investment project—Exceptions.
82.63.065 Administration—Department may adopt rules.
82.63.090 Multiple qualified buildings.

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

(1) "Advanced computing" means technologies used in the designing and developing of computing hardware and software, including innovations in designing the full spectrum of hardware from hand-held calculators to super computers, and peripheral equipment.

(2) "Advanced materials" means materials with engineered properties created through the development of specialized processing and synthesis technology, including ceramics, high value-added metals, electronic materials, composites, polymers, and biomaterials.

(3) "Applicant" means a person applying for a tax deferral under this chapter.

(4) "Biotechnology" means the application of technologies, such as recombinant DNA techniques, biochemistry, molecular and cellular biology, genetics and genetic engineering, cell fusion techniques, and new bioprocesses, using living organisms, or parts of organisms, to produce or modify products, to improve plants or animals, to develop microorganisms for specific uses, to identify targets for small molecule pharmaceutical development, or to transform biological systems into useful processes and products or to develop microorganisms for specific uses.

(5) "Department" means the department of revenue.

(6) "Electronic device technology" means technologies involving microelectronics; semiconductors; electronic equipment and instrumentation; radio frequency, microwave, and millimeter electronics; optical and optic-electrical devices; and data and digital communications and imaging devices.

(7) "Eligible investment project" means an investment project which either initiates a new operation, or expands or diversifies a current operation by expanding, renovating, or

equipping an existing facility. The lessor or owner of the qualified building is not eligible for a deferral unless:

(a) The underlying ownership of the buildings, machinery, and equipment vests exclusively in the same person; or

(b)(i) The lessor by written contract agrees to pass the economic benefit of the deferral to the lessee;

(ii) The lessee that receives the economic benefit of the deferral agrees in writing with the department to complete the annual survey required under RCW 82.63.020(2); and

(iii) The economic benefit of the deferral passed to the lessee is no less than the amount of tax deferred by the lessor and is evidenced by written documentation of any type of payment, credit, or other financial arrangement between the lessor or owner of the qualified building and the lessee.

(8) "Environmental technology" means assessment and prevention of threats or damage to human health or the environment, environmental cleanup, and the development of alternative energy sources.

(9)(a) "Initiation of construction" means the date that a building permit is issued under the building code adopted under RCW 19.27.031 for:

(i) Construction of the qualified building, if the underlying ownership of the building vests exclusively with the person receiving the economic benefit of the deferral;

(ii) Construction of the qualified building, if the economic benefits of the deferral are passed to a lessee as provided in subsection (7) of this section; or

(iii) Tenant improvements for a qualified building, if the economic benefits of the deferral are passed to a lessee as provided in subsection (7) of this section.

(b) "Initiation of construction" does not include soil testing, site clearing and grading, site preparation, or any other related activities that are initiated before the issuance of a building permit for the construction of the foundation of the building.

(c) If the investment project is a phased project, "initiation of construction" shall apply separately to each phase.

(10) "Investment project" means an investment in qualified buildings or qualified machinery and equipment, including labor and services rendered in the planning, installation, and construction or improvement of the project.

(11) "Multiple qualified buildings" means qualified buildings leased to the same person when such structures: (a) Are located within a five-mile radius; and (b) the initiation of construction of each building begins within a sixty-month period.

(12) "Person" has the meaning given in RCW 82.04.030 and includes state universities as defined in RCW 28B.10.016.

(13) "Pilot scale manufacturing" means design, construction, and testing of preproduction prototypes and models in the fields of biotechnology, advanced computing, electronic device technology, advanced materials, and environmental technology other than for commercial sale. As used in this subsection, "commercial sale" excludes sales of prototypes or sales for market testing if the total gross receipts from such sales of the product, service, or process do not exceed one million dollars.

(14) "Qualified buildings" means construction of new structures, and expansion or renovation of existing structures for the purpose of increasing floor space or production capacity used for pilot scale manufacturing or qualified research and development, including plant offices and other facilities that are an essential or an integral part of a structure used for pilot scale manufacturing or qualified research and development. If a building or buildings are used partly for pilot scale manufacturing or qualified research and development, and partly for other purposes, the applicable tax deferral shall be determined by apportionment of the costs of construction under rules adopted by the department. Such rules may include provisions for determining the amount of the deferral based on apportionment of costs of construction of an investment project consisting of a building or multiple buildings, where qualified research and development or pilot scale manufacturing activities are shifted within a building or from one building to another building.

(15) "Qualified machinery and equipment" means fixtures, equipment, and support facilities that are an integral and necessary part of a pilot scale manufacturing or qualified research and development operation. "Qualified machinery and equipment" includes: Computers; software; data processing equipment; laboratory equipment, instrumentation, and other devices used in a process of experimentation to develop a new or improved pilot model, plant process, product, formula, invention, or similar property; manufacturing components such as belts, pulleys, shafts, and moving parts; molds, tools, and dies; vats, tanks, and fermenters; operating structures; and all other equipment used to control, monitor, or operate the machinery. For purposes of this chapter, qualified machinery and equipment must be either new to the taxing jurisdiction of the state or new to the certificate holder, except that used machinery and equipment may be treated as qualified machinery and equipment if the certificate holder either brings the machinery and equipment into Washington or makes a retail purchase of the machinery and equipment in Washington or elsewhere.

(16) "Qualified research and development" means research and development performed within this state in the fields of advanced computing, advanced materials, biotechnology, electronic device technology, and environmental technology.

(17) "Recipient" means a person receiving a tax deferral under this chapter.

(18) "Research and development" means activities performed to discover technological information, and technical and nonroutine activities concerned with translating technological information into new or improved products, processes, techniques, formulas, inventions, or software. The term includes exploration of a new use for an existing drug, device, or biological product if the new use requires separate licensing by the federal food and drug administration under chapter 21, C.F.R., as amended. The term does not include adaptation or duplication of existing products where the products are not substantially improved by application of the technology, nor does the term include surveys and studies, social science and humanities research, market research or testing, quality control, sale promotion and service, computer software developed for internal use, and research in areas such as improved style, taste, and seasonal design. [2009 c 268 § 2; 2004 c 2 § 3; 1995 1st sp.s. c 3 § 12; 1994 sp.s. c 5 § 3.]

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

Policy—Application—2009 c 268: See notes following RCW 82.63.090.

Findings—Effective date—1995 1st sp.s. c 3: See notes following RCW 82.08.02565.

82.63.020 Application—Annual survey—Reports. (1) Application for deferral of taxes under this chapter must be made before initiation of construction of, or acquisition of equipment or machinery for the investment project. In the case of an investment project involving multiple qualified buildings, applications must be made for, and before the initiation of construction of, each qualified building. The application shall be made to the department in a form and manner prescribed by the department. The application shall contain information regarding the location of the investment project, the applicant's average employment in the state for the prior year, estimated or actual new employment related to the project, estimated or actual wages of employees related to the project, estimated or actual costs, time schedules for completion and operation, and other information required by the department. The department shall rule on the application within sixty days.

(2)(a) The legislature finds that accountability and effectiveness are important aspects of setting tax policy. In order to make policy choices regarding the best use of limited state resources the legislature needs information on how a tax incentive is used.

(b) Applicants for deferral of taxes under this chapter shall complete an annual survey. If the economic benefits of the deferral are passed to a lessee as provided in RCW 82.63.010(7), the lessee shall complete the annual survey and the applicant is not required to complete the annual survey. The survey is due by March 31st of the year following the calendar year in which the investment project is certified by the department as having been operationally complete and the seven succeeding calendar years. The survey shall include the amount of tax deferred, the number of new products or research projects by general classification, and the number of trademarks, patents, and copyrights associated with activities at the investment project. The survey shall also include the following information for employment positions in Washington:

(i) The number of total employment positions;

(ii) Full-time, part-time, and temporary employment positions as a percent of total employment;

(iii) The number of employment positions according to the following wage bands: Less than thirty thousand dollars; thirty thousand dollars or greater, but less than sixty thousand dollars; and sixty thousand dollars or greater. A wage band containing fewer than three individuals may be combined with another wage band; and

(iv) The number of employment positions that have employer-provided medical, dental, and retirement benefits, by each of the wage bands.

(c) The department may request additional information necessary to measure the results of the deferral program, to be submitted at the same time as the survey.

(d) All information collected under this subsection, except the amount of the tax deferral taken, is deemed taxpayer information under RCW 82.32.330 and is not disclosable. Information on the amount of tax deferral taken is not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request.

(3) The department shall use the information from this section to prepare summary descriptive statistics by category. No fewer than three taxpayers shall be included in any category. The department shall report these statistics to the legislature each year by September 1st.

(4) The department shall use the information to study the tax deferral program authorized under this chapter. The department shall report to the legislature by December 1, 2009, and December 1, 2013. The reports shall measure the effect of the program on job creation, the number of jobs created for Washington residents, company growth, the introduction of new products, the diversification of the state's economy, growth in research and development investment, the movement of firms or the consolidation of firms' operations into the state, and such other factors as the department selects. [2009 c 268 § 3; 2004 c 2 § 4; 1994 sp.s. c 5 § 4.]

Policy—Application—2009 c 268: See notes following RCW 82.63.090.

82.63.045 Repayment not required—Repayment schedule for unqualified investment project—Exceptions. (1) Except as provided in subsection (2) of this section, taxes deferred under this chapter need not be repaid.

(2)(a) If, on the basis of survey under RCW 82.63.020 or other information, the department finds that an investment project is used for purposes other than qualified research and development or pilot scale manufacturing at any time during the calendar year in which the investment project is certified by the department as having been operationally completed, or at any time during any of the seven succeeding calendar years, a portion of deferred taxes shall be immediately due according to the following schedule:

Year in which use occurs	% of deferred taxes due
1	100%
2	87.5%
3	75%
4	62.5%
5	50%
6	37.5%
7	25%
8	12.5%

(b) If a recipient of the deferral fails to complete the annual survey required under RCW 82.63.020 by the date due, 12.5 percent of the deferred tax shall be immediately due. If the economic benefits of the deferral are passed to a lessee as provided in RCW 82.63.010(7), the lessee is responsible for payment to the extent the lessee has received the economic benefit.

(c) If an investment project is used for purposes other than qualified research and development or pilot scale manufacturing at any time during the calendar year in which the investment project is certified as having been operationally complete and the recipient of the deferral fails to complete

the annual survey due under RCW 82.63.020, the portion of deferred taxes immediately due is the amount on the schedule in (a) of this subsection. If the economic benefits of the deferral are passed to a lessee as provided in RCW 82.63.010(7), the lessee is responsible for payment to the extent the lessee has received the economic benefit.

(3)(a) Notwithstanding subsection (2) of this section, in the case of an investment project consisting of multiple qualified buildings, the lessee is solely liable for payment of any deferred tax determined by the department to be due and payable under this section beginning on the date the department certifies that the project is operationally complete.

(b) This subsection does not relieve the lessors of its obligation to the lessee under RCW 82.63.010(7) to pass the economic benefit of the deferral to the lessee.

(4) The department shall assess interest at the rate provided for delinquent taxes, but not penalties, retroactively to the date of deferral. The debt for deferred taxes will not be extinguished by insolvency or other failure of the recipient. Transfer of ownership does not terminate the deferral. The deferral is transferred, subject to the successor meeting the eligibility requirements of this chapter, for the remaining periods of the deferral.

(5) Notwithstanding subsection (2) of this section, deferred taxes on the following need not be repaid:

(a) Machinery and equipment, and sales of or charges made for labor and services, which at the time of purchase would have qualified for exemption under RCW 82.08.02565; and

(b) Machinery and equipment which at the time of first use would have qualified for exemption under RCW 82.12.02565. [2009 c 268 § 5; 2004 c 2 § 6; 2000 c 106 § 10; 1995 1st sp.s. c 3 § 13.]

Policy—Application—2009 c 268: See notes following RCW 82.63.090.

Effective date—2000 c 106: See note following RCW 82.32.330.

Findings—Effective date—1995 1st sp.s. c 3: See notes following RCW 82.08.02565.

82.63.065 Administration—Department may adopt rules. The department may adopt rules as may be necessary to administer this chapter. [2009 c 268 § 6.]

Policy—Application—2009 c 268: See notes following RCW 82.63.090.

82.63.090 Multiple qualified buildings. (1) In the case of multiple qualified buildings, if the lessee who will conduct the qualified research and development or pilot scale manufacturing within the multiple qualified buildings desires to treat the multiple qualified buildings as a single investment project, the lessee must make a preliminary election to treat the multiple qualified buildings as a single investment project. The lessee must make the preliminary election before a temporary certificate of occupancy, or its equivalent, is issued for any of the multiple qualified buildings.

(2)(a) A final election whether or not to treat the multiple qualified buildings as a single investment project must be made by the date that is the earlier of:

(i) Sixty months following the date that the lessee made the preliminary election under subsection (1) of this section; or

(ii) Thirty days after the issuance of the temporary certificate of occupancy, or its equivalent, for the last qualified building to be completed and that will be included in the final election.

(b) All buildings included in a final election to treat multiple qualified buildings as a single investment project must have been issued a temporary certificate of occupancy or its equivalent.

(c) Before the final election is made, the lessee may remove one or more of the qualified buildings included in the preliminary election from the investment project.

(d) When a qualified building for which a preliminary election has been made under subsection (1) of this section is, for any reason, not included in a final election to treat the multiple qualified buildings as a single investment project, the qualified building will be treated as an individual investment project under the original application for that building.

(e) If a final election is made not to treat the multiple qualified buildings as a single investment project or a final election is not made by the deadline in (a) of this subsection, the qualified buildings will each be treated as individual investment projects under the original applications for those buildings.

(3) When a final election is made to treat multiple qualified buildings as a single investment project, the department must review the investment project to determine whether to certify the investment project as being operationally complete. If the department certifies that an investment project is operationally complete, the certification is deemed to have occurred in the calendar year in which the final election is made.

(4) The department may not certify as operationally complete an investment project consisting of multiple qualifying buildings unless the lessee furnishes the department with a bond, letter of credit, or other security acceptable to the department in an amount equal to the repayment obligation as determined by the department. The department may decrease the secured amount each year as the repayment obligation decreases under the provisions of RCW 82.63.045. If the lessee does not furnish the department with a bond, letter of credit, or other security acceptable to the department equal to the amount of deferred tax, the qualified buildings will each be treated as individual investment projects under the original applications for those buildings.

(5) The preliminary election and final election must be made in a form and manner prescribed by the department. [2009 c 268 § 4.]

Policy—2009 c 268: "The legislature has long recognized that high-wage, high-skilled jobs are vital to the economic health of the state and its citizens. The legislature also recognizes that targeted tax incentives encourage the formation of high-wage, high-skilled jobs. For that and related reasons, the legislature established the tax deferral program in chapter 82.63 RCW for high-technology research and development and pilot scale manufacturing. In doing so, the legislature ensured that the deferral applies to the construction or renovation of one or more buildings by an owner who engages in qualifying research and development or pilot scale manufacturing. The legislature also ensured that the deferral applies to owners who lease newly constructed or renovated buildings to one or more lessees that conduct qualifying research and development or pilot scale manufacturing, if the owner passes on the economic benefit of the deferral to the lessee or lessees. However, current language could be interpreted to deny the deferral to multiple lessors of separate buildings leasing to a single qualifying lessee under the umbrella of one project and a single deferral application, unless the lessors form a joint venture or similar entity. Because the legislature did not

intend to deny the deferral for such projects, the legislature by this act, amends chapter 82.63 RCW to clarify that the deferral applies to an otherwise qualifying project involving a single deferral application covering multiple lessors leasing separate buildings to a single qualifying lessee." [2009 c 268 § 1.]

Application—2009 c 268: "This act applies to deferral applications received by the department of revenue after June 30, 2007." [2009 c 268 § 7.]

Chapter 82.64 RCW
SYRUP TAX

Sections

82.64.020 Tax imposed—Wholesale, retail—Revenue deposited in the general fund.

82.64.020 Tax imposed—Wholesale, retail—Revenue deposited in the general fund. (1) A tax is imposed on each sale at wholesale of syrup in this state. The rate of the tax shall be equal to one dollar per gallon. Fractional amounts shall be taxed proportionally.

(2) A tax is imposed on each sale at retail of syrup in this state. The rate of the tax shall be equal to the rate imposed under subsection (1) of this section.

(3) Moneys collected under this chapter shall be deposited in the state general fund.

(4) Chapter 82.32 RCW applies to the taxes imposed in this chapter. The tax due dates, reporting periods, and return requirements applicable to chapter 82.04 RCW apply equally to the taxes imposed in this chapter. [2009 c 479 § 72; 1994 sp.s. c 7 § 906 (Referendum Bill No. 43, approved November 8, 1994); 1991 c 80 § 2; 1989 c 271 § 506.]

Effective date—2009 c 479: See note following RCW 2.56.030.

Contingent partial referendum—1994 sp.s. c 7 §§ 901-909: See note following RCW 66.24.210.

Finding—Intent—Severability—Effective dates—Contingent expiration date—1994 sp.s. c 7: See notes following RCW 43.70.540.

Construction—1994 sp.s. c 7 §§ 905-908: See note following RCW 82.64.010.

Policy—Savings—Effective date—1991 c 80: See notes following RCW 82.64.010.

Chapter 82.72 RCW
TELEPHONE PROGRAM EXCISE TAX ADMINISTRATION

Sections

82.72.040 Tax payment and collection requirements. *(Effective January 1, 2010.)*
82.72.070 Liability for payment of taxes. *(Effective January 1, 2010.)*

82.72.040 Tax payment and collection requirements. ***(Effective January 1, 2010.)*** (1) Telephone program excise taxes must be paid by the subscriber to the local exchange company providing the switched access line, and each local exchange company shall collect from the subscriber the full amount of the taxes payable. Telephone program excise taxes to be collected by the local exchange company are deemed to be held in trust by the local exchange company until paid to the department. Any local exchange company that appropriates or converts the tax collected to its own use or to any use other than the payment of the tax to the extent that the money collected is not available for payment on the due date as prescribed in this chapter is guilty of a gross misdemeanor.

(2) If any local exchange company fails to collect telephone program excise taxes or, after collecting the tax, fails to pay it to the department in the manner prescribed by this chapter, whether such failure is the result of its own act or the result of acts or conditions beyond its control, the local exchange company is personally liable to the state for the amount of the tax, unless the local exchange company has taken from the buyer in good faith documentation, in a form and manner prescribed by the department, stating that the buyer is not a subscriber or is otherwise not liable for telephone program excise taxes.

(3) The amount of tax, until paid by the subscriber to the local exchange company or to the department, constitutes a debt from the subscriber to the local exchange company. Any local exchange company that fails or refuses to collect telephone program excise taxes as required with intent to violate the provisions of this chapter or to gain some advantage or benefit, either direct or indirect, and any subscriber who refuses to pay any telephone excise tax is guilty of a misdemeanor.

(4) If a subscriber has failed to pay to the local exchange company the telephone program excise taxes and the local exchange company has not paid the amount of the tax to the department, the department may, in its discretion, proceed directly against the subscriber for collection of the tax, in which case a penalty of ten percent may be added to the amount of the tax for failure of the subscriber to pay the tax to the local exchange company, regardless of when the tax is collected by the department. Telephone program excise taxes are due as provided under RCW 82.72.050. [2009 c 563 § 214; 2004 c 254 § 6.]

Finding—Intent—Construction—Effective date—Reports and recommendations—2009 c 563: See notes following RCW 82.32.780.

Effective date—2004 c 254: See note following RCW 82.72.010.

82.72.070 Liability for payment of taxes. ***(Effective January 1, 2010.)*** (1) Unless a local exchange company has taken from the buyer documentation, in a form and manner prescribed by the department, stating that the buyer is not a subscriber or is otherwise not liable for telephone program excise taxes, the burden of proving that a sale of the use of a switched access line was not a sale to a subscriber or was otherwise not subject to telephone program excise taxes is upon the person who made the sale.

(2) If a local exchange company does not receive documentation, in a form and manner prescribed by the department, stating that the buyer is not a subscriber or is otherwise not liable for telephone program excise taxes at the time of the sale, have such documentation on file at the time of the sale, or obtain such documentation from the buyer within a reasonable time after the sale, the local exchange company remains liable for the telephone program excise taxes as provided in RCW 82.72.040, unless the local exchange company can demonstrate facts and circumstances according to rules adopted by the department that show the sale was properly made without payment of telephone program excise taxes.

(3) The penalty imposed by RCW 82.32.291 may not be assessed on telephone program excise taxes that are due but

not paid as a result of the improper use of documentation stating that the buyer is not a subscriber or is otherwise not liable for telephone program excise taxes. This subsection does not prohibit or restrict the application of other penalties authorized by law. [2009 c 563 § 215; 2004 c 254 § 9.]

Finding—Intent—Construction—Effective date—Reports and recommendations—2009 c 563: See notes following RCW 82.32.780.

Effective date—2004 c 254: See note following RCW 82.72.010.

Chapter 82.73 RCW

WASHINGTON MAIN STREET PROGRAM TAX INCENTIVES

Sections

82.73.010 Definitions.

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

(1) "Applicant" means a person applying for a tax credit under this chapter.

(2) "Contribution" means cash contributions.

(3) "Department" means the department of revenue.

(4) "Main street trust fund" means the department of commerce's main street trust fund account under RCW 43.360.050.

(5) "Person" has the meaning given in RCW 82.04.030.

(6) "Program" means a nonprofit organization under internal revenue code sections 501(c)(3) or 501(c)(6), with the sole mission of revitalizing a downtown or neighborhood commercial district area, that is designated by the department of commerce as described in RCW 43.360.010 through 43.360.050. [2009 c 565 § 55; 2005 c 514 § 902.]

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

Short title—2005 c 514 §§ 901-912: See note following RCW 43.360.005.

Effective date—2005 c 514: See note following RCW 83.100.230.

Part headings not law—Severability—2005 c 514: See notes following RCW 82.12.808.

Chapter 82.75 RCW

TAX DEFERRALS FOR BIOTECHNOLOGY AND MEDICAL DEVICE MANUFACTURING BUSINESSES

Sections

82.75.010 Definitions.

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

(1) "Applicant" means a person applying for a tax deferral under this chapter.

(2) "Biotechnology" means a technology based on the science of biology, microbiology, molecular biology, cellular biology, biochemistry, or biophysics, or any combination of these, and includes, but is not limited to, recombinant DNA techniques, genetics and genetic engineering, cell fusion techniques, and new bioprocesses, using living organisms, or parts of organisms.

(3) "Biotechnology product" means any virus, therapeutic serum, antibody, protein, toxin, antitoxin, vaccine, blood, blood component or derivative, allergenic product, or analogous product produced through the application of biotechnology that is used in the prevention, treatment, or cure of diseases or injuries to humans.

(4) "Department" means the department of revenue.

(5)(a) "Eligible investment project" means an investment in qualified buildings or qualified machinery and equipment, including labor and services rendered in the planning, installation, and construction of the project.

(b) The lessor or owner of a qualified building is not eligible for a deferral unless:

(i) The underlying ownership of the buildings, machinery, and equipment vests exclusively in the same person; or

(ii)(A) The lessor by written contract agrees to pass the economic benefit of the deferral to the lessee;

(B) The lessee that receives the economic benefit of the deferral agrees in writing with the department to complete the annual survey required under RCW 82.32.645; and

(C) The economic benefit of the deferral passed to the lessee is no less than the amount of tax deferred by the lessor and is evidenced by written documentation of any type of payment, credit, or other financial arrangement between the lessor or owner of the qualified building and the lessee.

(6)(a) "Initiation of construction" means the date that a building permit is issued under the building code adopted under RCW 19.27.031 for:

(i) Construction of the qualified building, if the underlying ownership of the building vests exclusively with the person receiving the economic benefit of the deferral;

(ii) Construction of the qualified building, if the economic benefits of the deferral are passed to a lessee as provided in subsection (5)(b)(ii)(A) of this section; or

(iii) Tenant improvements for a qualified building, if the economic benefits of the deferral are passed to a lessee as provided in subsection (5)(b)(ii)(A) of this section.

(b) "Initiation of construction" does not include soil testing, site clearing and grading, site preparation, or any other related activities that are initiated before the issuance of a building permit for the construction of the foundation of the building.

(c) If the investment project is a phased project, "initiation of construction" shall apply separately to each phase.

(7) "Manufacturing" has the meaning provided in RCW 82.04.120.

(8) "Medical device" means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component, part, or accessory, that is designed or developed and:

(a) Recognized in the national formulary, or the United States pharmacopeia, or any supplement to them;

(b) Intended for use in the diagnosis of disease, or in the cure, mitigation, treatment, or prevention of disease or other conditions in human beings or other animals; or

(c) Intended to affect the structure or any function of the body of human beings or other animals, and which does not achieve any of its primary intended purposes through chemical action within or on the body of human beings or other ani-

mals and which is not dependent upon being metabolized for the achievement of any of its principal intended purposes.

(9) "Person" has the meaning provided in RCW 82.04.030.

(10) "Qualified buildings" means construction of new structures, and expansion or renovation of existing structures for the purpose of increasing floor space or production capacity used for biotechnology product manufacturing or medical device manufacturing activities, including plant offices, commercial laboratories for process development, quality assurance and quality control, and warehouses or other facilities for the storage of raw material or finished goods if the facilities are an essential or an integral part of a factory, plant, or laboratory used for biotechnology product manufacturing or medical device manufacturing. If a building is used partly for biotechnology product manufacturing or medical device manufacturing and partly for other purposes, the applicable tax deferral shall be determined by apportionment of the costs of construction under rules adopted by the department.

(11) "Qualified machinery and equipment" means all new industrial and research fixtures, equipment, and support facilities that are an integral and necessary part of a biotechnology product manufacturing or medical device manufacturing operation. "Qualified machinery and equipment" includes: Computers; software; data processing equipment; laboratory equipment; manufacturing components such as belts, pulleys, shafts, and moving parts; molds, tools, and dies; operating structures; and all equipment used to control or operate the machinery.

(12) "Recipient" means a person receiving a tax deferral under this chapter. [2009 c 549 § 1033; 2006 c 178 § 2.]

Effective date—2006 c 178: "This act takes effect July 1, 2006." [2006 c 178 § 10.]

Severability—2006 c 178: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2006 c 178 § 12.]

Title 83

ESTATE TAXATION

Chapters

83.100 Estate and transfer tax act.
83.110A Washington uniform estate tax apportionment act.

Chapter 83.100 RCW
ESTATE AND TRANSFER TAX ACT

Sections

83.100.046 Deduction—Property used for farming—Requirements, conditions. *(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.) (Effective January 1, 2014.)*
83.100.047 Marital deduction, qualified domestic trust—Election—State registered domestic partner entitled to deduction—Other deductions taken for income tax purposes disallowed. *(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.) (Effective January 1, 2014.)*
83.100.906 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. *(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.) (Effective January 1, 2014.)*

83.100.046 Deduction—Property used for farming—Requirements, conditions. ***(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.) (Effective January 1, 2014.)*** (1) For the purposes of determining the Washington taxable estate, a deduction is allowed from the federal taxable estate for:

(a) The value of qualified real property reduced by any amounts allowable as a deduction in respect of the qualified real property and tangible personal property under section 2053(a)(4) of the internal revenue code, if the decedent was at the time of his or her death a citizen or resident of the United States.

(b) The value of any tangible personal property used by the decedent or a member of the decedent's family for a qualified use on the date of the decedent's death, reduced by any amounts allowable as a deduction in respect of the tangible personal property under section 2053(a)(4) of the internal revenue code, if all of the requirements of subsection (10)(f)(i)(A) of this section are met and the decedent was at the time of his or her death a citizen or resident of the United States.

(c) The value of real property that is not deductible under (a) of this subsection solely by reason of subsection (10)(f)(i)(B) of this section, reduced by any amounts allowable as a deduction in respect of the qualified real property and tangible personal property under section 2053(a)(4) of the internal revenue code, if the requirements of subsection (10)(f)(i)(C) of this section are met with respect to the property and the decedent was at the time of his or her death a citizen or resident of the United States.

(2) Property shall be considered to have been acquired from or to have passed from the decedent if:

(a) The property is so considered under section 1014(b) of the Internal Revenue Code;

(b) The property is acquired by any person from the estate; or

(c) The property is acquired by any person from a trust, to the extent the property is includible in the gross estate of the decedent.

(3) If the decedent and the decedent's surviving spouse at any time held qualified real property as community property, the interest of the surviving spouse in the property shall be taken into account under this section to the extent necessary to provide a result under this section with respect to the property which is consistent with the result which would have obtained under this section if the property had not been community property.

(4) In the case of any qualified woodland, the value of trees growing on the woodland may be deducted if otherwise qualified under this section.

(5) If property is qualified real property with respect to a decedent, hereinafter in this subsection referred to as the "first decedent," and the property was acquired from or passed from the first decedent to the surviving spouse of the first decedent, active management of the farm by the surviving spouse shall be treated as material participation by the surviving spouse in the operation of the farm.

(6) Property owned indirectly by the decedent may qualify for a deduction under this section if owned through an interest in a corporation, partnership, or trust as the terms corporation, partnership, or trust are used in section 2032A(g) of

the Internal Revenue Code. In order to qualify for a deduction under this subsection, the interest, in addition to meeting the other tests for qualification under this section, must qualify under section 6166(b)(1) of the Internal Revenue Code as an interest in a closely held business on the date of the decedent's death and for sufficient other time, combined with periods of direct ownership, to equal at least five years of the eight-year period preceding the death.

(7)(a) If, on the date of the decedent's death, the requirements of subsection (10)(f)(i)(C)(II) of this section with respect to the decedent for any property are not met, and the decedent (i) was receiving old age benefits under Title II of the social security act for a continuous period ending on such date, or (ii) was disabled for a continuous period ending on this date, then subsection (10)(f)(i)(C)(II) of this section shall be applied with respect to the property by substituting "the date on which the longer of such continuous periods began" for "the date of the decedent's death" in subsection (10)(f)(i)(C) of this section.

(b) For the purposes of (a) of this subsection, an individual shall be disabled if the individual has a mental or physical impairment which renders that individual unable to materially participate in the operation of the farm.

(8) Property may be deducted under this section whether or not special valuation is elected under section 2032A of the Internal Revenue Code on the federal return. For the purposes of determining the deduction under this section, the value of property is its value as used to determine the value of the gross estate.

(9)(a) In the case of any qualified replacement property, any period during which there was ownership, qualified use, or material participation with respect to the replaced property by the decedent or any member of the decedent's family shall be treated as a period during which there was ownership, use, or material participation, as the case may be, with respect to the qualified replacement property.

(b) Subsection (9)(a) of this section shall not apply to the extent that the fair market value of the qualified replacement property, as of the date of its acquisition, exceeds the fair market value of the replaced property, as of the date of its disposition.

(c) For the purposes of this subsection (9), the following definitions apply:

(i) "Qualified replacement property" means any real property:

(A) Which is acquired in an exchange which qualifies under section 1031 of the Internal Revenue Code; or

(B) The acquisition of which results in the nonrecognition of gain under section 1033 of the Internal Revenue Code.

The term "qualified replacement property" only includes property which is used for the same qualified use as the replaced property was being used before the exchange.

(ii) "Replaced property" means the property was:

(A) Transferred in the exchange which qualifies under section 1031 of the Internal Revenue Code; or

(B) Compulsorily or involuntarily converted within the meaning of section 1033 of the Internal Revenue Code.

(10) For the purposes of this section, the following definitions apply:

(a) "Active management" means the making of the management decisions of a farm, other than the daily operating decisions.

(b) "Farm" includes stock, dairy, poultry, fruit, furbearing animal, and truck farms; plantations; ranches; nurseries; ranges; greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities; and orchards and woodlands.

(c) "Farming purposes" means:

(i) Cultivating the soil or raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of animals on a farm;

(ii) Handling, drying, packing, grading, or storing on a farm any agricultural or horticultural commodity in its unmanufactured state, but only if the owner, tenant, or operator of the farm regularly produces more than one-half of the commodity so treated; and

(iii)(A) The planting, cultivating, caring for, or cutting of trees; or

(B) The preparation, other than milling, of trees for market.

(d) "Member of the family" means, with respect to any individual, only:

(i) An ancestor of the individual;

(ii) The spouse or state registered domestic partner of the individual;

(iii) A lineal descendant of the individual, of the individual's spouse or state registered domestic partner, or of a parent of the individual; or

(iv) The spouse or state registered domestic partner of any lineal descendant described in (d)(iii) of this subsection.

For the purposes of this subsection (10)(d), a legally adopted child of an individual shall be treated as the child of such individual by blood.

(e) "Qualified heir" means, with respect to any property, a member of the decedent's family who acquired property, or to whom property passed, from the decedent.

(f)(i) "Qualified real property" means real property which was acquired from or passed from the decedent to a qualified heir of the decedent and which, on the date of the decedent's death, was being used for a qualified use by the decedent or a member of the decedent's family, but only if:

(A) Fifty percent or more of the adjusted value of the gross estate consists of the adjusted value of real or personal property which:

(I) On the date of the decedent's death, was being used for a qualified use by the decedent or a member of the decedent's family; and

(II) Was acquired from or passed from the decedent to a qualified heir of the decedent;

(B) Twenty-five percent or more of the adjusted value of the gross estate consists of the adjusted value of real property which meets the requirements of (f)(i)(A)(II) and (f)(i)(C) of this subsection; and

(C) During the eight-year period ending on the date of the decedent's death there have been periods aggregating five years or more during which:

(I) The real property was owned by the decedent or a member of the decedent's family and used for a qualified use by the decedent or a member of the decedent's family; and

(II) There was material participation by the decedent or a member of the decedent's family in the operation of the farm. For the purposes of this subsection (f)(i)(C)(II), material participation shall be determined in a manner similar to the manner used for purposes of section 1402(a)(1) of the Internal Revenue Code.

(ii) For the purposes of this subsection, the term "adjusted value" means:

(A) In the case of the gross estate, the value of the gross estate, determined without regard to any special valuation under section 2032A of the Internal Revenue Code, reduced by any amounts allowable as a deduction under section 2053(a)(4) of the Internal Revenue Code; or

(B) In the case of any real or personal property, the value of the property for purposes of chapter 11 of the Internal Revenue Code, determined without regard to any special valuation under section 2032A of the Internal Revenue Code, reduced by any amounts allowable as a deduction in respect of such property under section 2053(a)(4) of the Internal Revenue Code.

(g) "Qualified use" means the property is used as a farm for farming purposes. In the case of real property which meets the requirements of (f)(i)(C) of this subsection, residential buildings and related improvements on the real property occupied on a regular basis by the owner or lessee of the real property or by persons employed by the owner or lessee for the purpose of operating or maintaining the real property, and roads, buildings, and other structures and improvements functionally related to the qualified use shall be treated as real property devoted to the qualified use. For tangible personal property eligible for a deduction under subsection (1)(b) of this section, "qualified use" means the property is used primarily for farming purposes on a farm.

(h) "Qualified woodland" means any real property which:

(i) Is used in timber operations; and

(ii) Is an identifiable area of land such as an acre or other area for which records are normally maintained in conducting timber operations.

(i) "Timber operations" means:

(i) The planting, cultivating, caring for, or cutting of trees; or

(ii) The preparation, other than milling, of trees for market. [2009 c 521 § 191; 2005 c 514 § 1201; 2005 c 516 § 4.]

Effective dates—2009 c 521 §§ 5-8, 79, 87-103, 107, 151, 165, 166, 173-175, and 190-192: See note following RCW 2.10.900.

Finding—Intent—Application—Severability—Effective date—2005 c 516: See notes following RCW 83.100.040.

Effective date—2005 c 514: See note following RCW 82.04.4272.

Part headings not law—Severability—2005 c 514: See notes following RCW 82.12.808.

83.100.047 Marital deduction, qualified domestic trust—Election—State registered domestic partner entitled to deduction—Other deductions taken for income tax purposes disallowed. ***(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.) (Effective January 1, 2014.)*** (1)(a) If the federal taxable estate on the federal return is determined by making an election under section 2056 or 2056A of the Internal Revenue Code, or if no federal return is required to be filed, the department may provide by rule for a separate election on the Washington return, consistent with section 2056 or 2056A of the Internal Revenue Code and (b) of this subsection, for the purpose of determining the amount of tax due under this chapter. The election shall be binding on the estate and the beneficiaries, consistent with the Internal Revenue Code and (b) of this subsection. All other elections or valuations on the Washington return shall be made in a manner consistent with the federal return, if a federal return is required, and such rules as the department may provide.

(b) The department shall provide by rule that a state registered domestic partner is deemed to be a surviving spouse and entitled to a deduction from the Washington taxable estate for any interest passing from the decedent to his or her domestic partner, consistent with section 2056 or 2056A of the Internal Revenue Code but regardless of whether such interest would be deductible from the federal gross estate under section 2056 or 2056A of the Internal Revenue Code.

(2) Amounts deducted for federal income tax purposes under section 642(g) of the Internal Revenue Code of 1986 shall not be allowed as deductions in computing the amount of tax due under this chapter. [2009 c 521 § 192; 2005 c 516 § 13.]

Effective dates—2009 c 521 §§ 5-8, 79, 87-103, 107, 151, 165, 166, 173-175, and 190-192: See note following RCW 2.10.900.

Finding—Intent—Application—Severability—Effective date—2005 c 516: See notes following RCW 83.100.040.

83.100.906 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. ***(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.) (Effective January 1, 2014.)*** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 190.]

Effective dates—2009 c 521 §§ 5-8, 79, 87-103, 107, 151, 165, 166, 173-175, and 190-192: See note following RCW 2.10.900.

Chapter 83.110A RCW

WASHINGTON UNIFORM ESTATE TAX APPORTIONMENT ACT

Sections

83.110A.905 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. *(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*

83.110A.905 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. ***(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 193.]

Title 84

PROPERTY TAXES

Chapters

84.04 Definitions.
84.33 Timber and forest lands.
84.34 Open space, agricultural, timber lands—Current use—Conservation futures.
84.36 Exemptions.
84.40 Listing of property.
84.41 Revaluation of property.
84.52 Levy of taxes.
84.55 Limitations upon regular property taxes.
84.56 Collection of taxes.
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Chapter 84.04 RCW
DEFINITIONS

Sections

84.04.050 "Householder." *(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*
84.04.900 Construction—Title applicable to state registered domestic partnerships—2009 c 521. *(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*

84.04.050 "Householder." ***(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*** "Householder" shall be taken to mean and include every person, married, in a state registered domestic partnership, or single, who resides within the state of Washington being the owner or holder of an estate or having a house or place of abode, either as owner or lessee. [2009 c 521 § 195; 1961 c 15 § 84.04.050. Prior: 1925 ex.s. c 130 § 6, part; 1897 c 71 § 4, part; 1893 c 124 § 4, part; 1890 p 531 § 4, part; 1886 p 48 § 2, part; Code 1881 § 2830, part; RRS § 11110, part.]

84.04.900 Construction—Title applicable to state registered domestic partnerships—2009 c 521. ***(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*** For the purposes of this title, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 194.]

Chapter 84.33 RCW
TIMBER AND FOREST LANDS

Sections

84.33.140 Forest land valuation—Notation of forest land designation upon assessment and tax rolls—Notice of continuance—Removal of designation—Compensating tax.
84.33.145 Compensating tax.

84.33.140 Forest land valuation—Notation of forest land designation upon assessment and tax rolls—Notice of continuance—Removal of designation—Compensating tax. (1) When land has been designated as forest land under RCW 84.33.130, a notation of the designation shall be made each year upon the assessment and tax rolls. A copy of the notice of approval together with the legal description or assessor's parcel numbers for the land shall, at the expense of the applicant, be filed by the assessor in the same manner as deeds are recorded.

(2) In preparing the assessment roll as of January 1, 2002, for taxes payable in 2003 and each January 1st thereafter, the assessor shall list each parcel of designated forest land at a value with respect to the grade and class provided in this subsection and adjusted as provided in subsection (3) of this section. The assessor shall compute the assessed value of the land using the same assessment ratio applied generally in computing the assessed value of other property in the county. Values for the several grades of bare forest land shall be as follows:

LAND GRADE	OPERABILITY CLASS	VALUES PER ACRE
	1	$234
1	2	229
	3	217
	4	157
	1	198
2	2	190
	3	183
	4	132
	1	154
3	2	149

	3	148
	4	113
	1	117
4	2	114
	3	113
	4	86
	1	85
5	2	78
	3	77
	4	52
	1	43
6	2	39
	3	39
	4	37
	1	21
7	2	21
	3	20
	4	20
8		1

(3) On or before December 31, 2001, the department shall adjust by rule under chapter 34.05 RCW, the forest land values contained in subsection (2) of this section in accordance with this subsection, and shall certify the adjusted values to the assessor who will use these values in preparing the assessment roll as of January 1, 2002. For the adjustment to be made on or before December 31, 2001, for use in the 2002 assessment year, the department shall:

(a) Divide the aggregate value of all timber harvested within the state between July 1, 1996, and June 30, 2001, by the aggregate harvest volume for the same period, as determined from the harvester excise tax returns filed with the department under RCW 84.33.074; and

(b) Divide the aggregate value of all timber harvested within the state between July 1, 1995, and June 30, 2000, by the aggregate harvest volume for the same period, as determined from the harvester excise tax returns filed with the department under RCW 84.33.074; and

(c) Adjust the forest land values contained in subsection (2) of this section by a percentage equal to one-half of the percentage change in the average values of harvested timber reflected by comparing the resultant values calculated under (a) and (b) of this subsection.

(4) For the adjustments to be made on or before December 31, 2002, and each succeeding year thereafter, the same procedure described in subsection (3) of this section shall be followed using harvester excise tax returns filed under RCW 84.33.074. However, this adjustment shall be made to the prior year's adjusted value, and the five-year periods for calculating average harvested timber values shall be successively one year more recent.

(5) Land graded, assessed, and valued as forest land shall continue to be so graded, assessed, and valued until removal of designation by the assessor upon the occurrence of any of the following:

(a) Receipt of notice from the owner to remove the designation;

(b) Sale or transfer to an ownership making the land exempt from ad valorem taxation;

(c) Sale or transfer of all or a portion of the land to a new owner, unless the new owner has signed a notice of forest land designation continuance, except transfer to an owner who is an heir or devisee of a deceased owner, shall not, by itself, result in removal of designation. The signed notice of continuance shall be attached to the real estate excise tax affidavit provided for in RCW 82.45.150. The notice of continuance shall be on a form prepared by the department. If the notice of continuance is not signed by the new owner and attached to the real estate excise tax affidavit, all compensating taxes calculated under subsection (11) of this section shall become due and payable by the seller or transferor at time of sale. The auditor shall not accept an instrument of conveyance regarding designated forest land for filing or recording unless the new owner has signed the notice of continuance or the compensating tax has been paid, as evidenced by the real estate excise tax stamp affixed thereto by the treasurer. The seller, transferor, or new owner may appeal the new assessed valuation calculated under subsection (11) of this section to the county board of equalization in accordance with the provisions of RCW 84.40.038. Jurisdiction is hereby conferred on the county board of equalization to hear these appeals;

(d) Determination by the assessor, after giving the owner written notice and an opportunity to be heard, that:

(i) The land is no longer primarily devoted to and used for growing and harvesting timber. However, land shall not be removed from designation if a governmental agency, organization, or other recipient identified in subsection (13) or (14) of this section as exempt from the payment of compensating tax has manifested its intent in writing or by other official action to acquire a property interest in the designated forest land by means of a transaction that qualifies for an exemption under subsection (13) or (14) of this section. The governmental agency, organization, or recipient shall annually provide the assessor of the county in which the land is located reasonable evidence in writing of the intent to acquire the designated land as long as the intent continues or within sixty days of a request by the assessor. The assessor may not request this evidence more than once in a calendar year;

(ii) The owner has failed to comply with a final administrative or judicial order with respect to a violation of the restocking, forest management, fire protection, insect and disease control, and forest debris provisions of Title 76 RCW or any applicable rules under Title 76 RCW; or

(iii) Restocking has not occurred to the extent or within the time specified in the application for designation of such land.

(6) Land shall not be removed from designation if there is a governmental restriction that prohibits, in whole or in part, the owner from harvesting timber from the owner's designated forest land. If only a portion of the parcel is impacted by governmental restrictions of this nature, the restrictions cannot be used as a basis to remove the remainder of the forest land from designation under this chapter. For the purposes of this section, "governmental restrictions" includes: (a) Any law, regulation, rule, ordinance, program, or other

action adopted or taken by a federal, state, county, city, or other governmental entity; or (b) the land's zoning or its presence within an urban growth area designated under RCW 36.70A.110.

(7) The assessor shall have the option of requiring an owner of forest land to file a timber management plan with the assessor upon the occurrence of one of the following:

(a) An application for designation as forest land is submitted; or

(b) Designated forest land is sold or transferred and a notice of continuance, described in subsection (5)(c) of this section, is signed.

(8) If land is removed from designation because of any of the circumstances listed in subsection (5)(a) through (c) of this section, the removal shall apply only to the land affected. If land is removed from designation because of subsection (5)(d) of this section, the removal shall apply only to the actual area of land that is no longer primarily devoted to the growing and harvesting of timber, without regard to any other land that may have been included in the application and approved for designation, as long as the remaining designated forest land meets the definition of forest land contained in RCW 84.33.035.

(9) Within thirty days after the removal of designation as forest land, the assessor shall notify the owner in writing, setting forth the reasons for the removal. The seller, transferor, or owner may appeal the removal to the county board of equalization in accordance with the provisions of RCW 84.40.038.

(10) Unless the removal is reversed on appeal a copy of the notice of removal with a notation of the action, if any, upon appeal, together with the legal description or assessor's parcel numbers for the land removed from designation shall, at the expense of the applicant, be filed by the assessor in the same manner as deeds are recorded and a notation of removal from designation shall immediately be made upon the assessment and tax rolls. The assessor shall revalue the land to be removed with reference to its true and fair value as of January 1st of the year of removal from designation. Both the assessed value before and after the removal of designation shall be listed. Taxes based on the value of the land as forest land shall be assessed and payable up until the date of removal and taxes based on the true and fair value of the land shall be assessed and payable from the date of removal from designation.

(11) Except as provided in subsection (5)(c), (13), or (14) of this section, a compensating tax shall be imposed on land removed from designation as forest land. The compensating tax shall be due and payable to the treasurer thirty days after the owner is notified of the amount of this tax. As soon as possible after the land is removed from designation, the assessor shall compute the amount of compensating tax and mail a notice to the owner of the amount of compensating tax owed and the date on which payment of this tax is due. The amount of compensating tax shall be equal to the difference between the amount of tax last levied on the land as designated forest land and an amount equal to the new assessed value of the land multiplied by the dollar rate of the last levy extended against the land, multiplied by a number, in no event greater than nine, equal to the number of years for which the land was designated as forest land, plus compensating taxes on the land at forest land values up until the date of removal and the prorated taxes on the land at true and fair value from the date of removal to the end of the current tax year.

(12) Compensating tax, together with applicable interest thereon, shall become a lien on the land which shall attach at the time the land is removed from designation as forest land and shall have priority to and shall be fully paid and satisfied before any recognizance, mortgage, judgment, debt, obligation, or responsibility to or with which the land may become charged or liable. The lien may be foreclosed upon expiration of the same period after delinquency and in the same manner provided by law for foreclosure of liens for delinquent real property taxes as provided in RCW 84.64.050. Any compensating tax unpaid on its due date shall thereupon become delinquent. From the date of delinquency until paid, interest shall be charged at the same rate applied by law to delinquent ad valorem property taxes.

(13) The compensating tax specified in subsection (11) of this section shall not be imposed if the removal of designation under subsection (5) of this section resulted solely from:

(a) Transfer to a government entity in exchange for other forest land located within the state of Washington;

(b) A taking through the exercise of the power of eminent domain, or sale or transfer to an entity having the power of eminent domain in anticipation of the exercise of such power;

(c) A donation of fee title, development rights, or the right to harvest timber, to a government agency or organization qualified under RCW 84.34.210 and 64.04.130 for the purposes enumerated in those sections, or the sale or transfer of fee title to a governmental entity or a nonprofit nature conservancy corporation, as defined in RCW 64.04.130, exclusively for the protection and conservation of lands recommended for state natural area preserve purposes by the natural heritage council and natural heritage plan as defined in chapter 79.70 RCW or approved for state natural resources conservation area purposes as defined in chapter 79.71 RCW. At such time as the land is not used for the purposes enumerated, the compensating tax specified in subsection (11) of this section shall be imposed upon the current owner;

(d) The sale or transfer of fee title to the parks and recreation commission for park and recreation purposes;

(e) Official action by an agency of the state of Washington or by the county or city within which the land is located that disallows the present use of the land;

(f) The creation, sale, or transfer of forestry riparian easements under RCW 76.13.120;

(g) The creation, sale, or transfer of a conservation easement of private forest lands within unconfined channel migration zones or containing critical habitat for threatened or endangered species under RCW 76.09.040;

(h) The sale or transfer of land within two years after the death of the owner of at least a fifty percent interest in the land if the land has been assessed and valued as classified forest land, designated as forest land under this chapter, or classified under chapter 84.34 RCW continuously since 1993. The date of death shown on a death certificate is the date used for the purposes of this subsection (13)(h); or

(i)(i) The discovery that the land was designated under this chapter in error through no fault of the owner. For pur-

poses of this subsection (13)(i), "fault" means a knowingly false or misleading statement, or other act or omission not in good faith, that contributed to the approval of designation under this chapter or the failure of the assessor to remove the land from designation under this chapter.

(ii) For purposes of this subsection (13), the discovery that land was designated under this chapter in error through no fault of the owner is not the sole reason for removal of designation under subsection (5) of this section if an independent basis for removal exists. An example of an independent basis for removal includes the land no longer being devoted to and used for growing and harvesting timber.

(14) In a county with a population of more than six hundred thousand inhabitants, the compensating tax specified in subsection (11) of this section shall not be imposed if the removal of designation as forest land under subsection (5) of this section resulted solely from:

(a) An action described in subsection (13) of this section; or

(b) A transfer of a property interest to a government entity, or to a nonprofit historic preservation corporation or nonprofit nature conservancy corporation, as defined in RCW 64.04.130, to protect or enhance public resources, or to preserve, maintain, improve, restore, limit the future use of, or otherwise to conserve for public use or enjoyment, the property interest being transferred. At such time as the property interest is not used for the purposes enumerated, the compensating tax shall be imposed upon the current owner. [2009 c 354 § 2; 2009 c 255 § 3; 2009 c 246 § 2; 2007 c 54 § 24; 2005 c 303 § 13; 2003 c 170 § 5. Prior: 2001 c 305 § 2; 2001 c 249 § 3; 2001 c 185 § 5; 1999 sp.s. c 4 § 703; 1999 c 233 § 21; 1997 c 299 § 2; 1995 c 330 § 2; 1992 c 69 § 2; 1986 c 238 § 2; 1981 c 148 § 9; 1980 c 134 § 3; 1974 ex.s. c 187 § 7; 1973 1st ex.s. c 195 § 93; 1972 ex.s. c 148 § 6; 1971 ex.s. c 294 § 14.]

Reviser's note: This section was amended by 2009 c 246 § 2, 2009 c 255 § 3, and by 2009 c 354 § 2, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Finding—Intent—2009 c 354: "(1) The legislature finds that the revenue generated from state forest lands is a vital component of the operating budget in many rural counties. The dependence on a natural resource-based economy is especially underscored in counties with lower population levels and large holdings of public land. The high cost of compliance with the federal endangered species act on state forest lands within these smaller counties is disproportionately burdensome when compared to their total county budgets.

(2) The intent of this act is to provide sustainable revenue to smaller counties that are heavily dependent on state forest land revenues while promoting long-term protection, conservation, and recovery of marbled murrelets and northern spotted owls. This act provides the necessary tools for the state to maintain long-term working forests by replacing state forest lands with endangered species-based harvest encumbrances with productive, working forest lands." [2009 c 354 § 6.]

Severability—2007 c 54: See note following RCW 82.04.050.

Effective date—2005 c 303 §§ 1-14: See note following RCW 79A.15.010.

Purpose—Intent—2003 c 170: See note following RCW 84.33.130.

Application—2001 c 185 §§ 1-12: See note following RCW 84.14.110.

Part headings not law—1999 sp.s. c 4: See note following RCW 77.85.180.

Effective date—1999 c 233: See note following RCW 4.28.320.

Effective date—1997 c 299: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 9, 1997]." [1997 c 299 § 4.]

Effective date—1995 c 330: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 11, 1995]." [1995 c 330 § 3.]

Effective date—1992 c 69: See RCW 84.34.923.

Purpose—Severability—Effective dates—1981 c 148: See notes following RCW 84.33.130.

Severability—1974 ex.s. c 187: See note following RCW 84.33.130.

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

84.33.145 Compensating tax. (1) If no later than thirty days after removal of designation the owner applies for classification under RCW 84.34.020 (1), (2), or (3), then the designated forest land shall not be considered removed from designation for purposes of the compensating tax under RCW 84.33.140 until the application for current use classification under chapter 84.34 RCW is denied or the property is removed from classification under RCW 84.34.108. Upon removal of classification under RCW 84.34.108, the amount of compensating tax due under this chapter shall be equal to:

(a) The difference, if any, between the amount of tax last levied on the land as designated forest land and an amount equal to the new assessed valuation of the land when removed from classification under RCW 84.34.108 multiplied by the dollar rate of the last levy extended against the land, multiplied by

(b) A number equal to:

(i) The number of years the land was designated under this chapter, if the total number of years the land was designated under this chapter and classified under chapter 84.34 RCW is less than ten; or

(ii) Ten minus the number of years the land was classified under chapter 84.34 RCW, if the total number of years the land was designated under this chapter and classified under chapter 84.34 RCW is at least ten.

(2) Nothing in this section authorizes the continued designation under this chapter or defers or reduces the compensating tax imposed upon forest land not transferred to classification under subsection (1) of this section which does not meet the definition of forest land under RCW 84.33.035. Nothing in this section affects the additional tax imposed under RCW 84.34.108.

(3) In a county with a population of more than six hundred thousand inhabitants, no amount of compensating tax is due under this section if the removal from classification under RCW 84.34.108 results from a transfer of property described in RCW 84.34.108(6). [2009 c 354 § 4; 2001 c 249 § 4; 1999 sp.s. c 4 § 704; 1997 c 299 § 3; 1992 c 69 § 3; 1986 c 315 § 3.]

Finding—Intent—2009 c 354: See note following RCW 84.33.140.

Part headings not law—1999 sp.s. c 4: See note following RCW 77.85.180.

Effective date—1997 c 299: See note following RCW 84.33.140.

Effective date—1992 c 69: See RCW 84.34.923.

Chapter 84.34 RCW

OPEN SPACE, AGRICULTURAL, TIMBER LANDS—CURRENT USE—CONSERVATION FUTURES

Sections

84.34.020 Definitions.
84.34.037 Applications for current use classification—To whom made—Factors—Review.
84.34.041 Application for current use classification—Forms—Public hearing—Approval or denial.
84.34.108 Removal of classification—Factors—Notice of continuance—Additional tax—Lien—Delinquencies—Exemptions.
84.34.250 Nonprofit nature conservancy corporation or association defined.

84.34.020 Definitions. As used in this chapter, unless a different meaning is required by the context:

(1) "Open space land" means (a) any land area so designated by an official comprehensive land use plan adopted by any city or county and zoned accordingly, or (b) any land area, the preservation of which in its present use would (i) conserve and enhance natural or scenic resources, or (ii) protect streams or water supply, or (iii) promote conservation of soils, wetlands, beaches or tidal marshes, or (iv) enhance the value to the public of abutting or neighboring parks, forests, wildlife preserves, nature reservations or sanctuaries or other open space, or (v) enhance recreation opportunities, or (vi) preserve historic sites, or (vii) preserve visual quality along highway, road, and street corridors or scenic vistas, or (viii) retain in its natural state tracts of land not less than one acre situated in an urban area and open to public use on such conditions as may be reasonably required by the legislative body granting the open space classification, or (c) any land meeting the definition of farm and agricultural conservation land under subsection (8) of this section. As a condition of granting open space classification, the legislative body may not require public access on land classified under (b)(iii) of this subsection for the purpose of promoting conservation of wetlands.

(2) "Farm and agricultural land" means:

(a) Any parcel of land that is twenty or more acres or multiple parcels of land that are contiguous and total twenty or more acres:

(i) Devoted primarily to the production of livestock or agricultural commodities for commercial purposes;

(ii) Enrolled in the federal conservation reserve program or its successor administered by the United States department of agriculture; or

(iii) Other similar commercial activities as may be established by rule;

(b)(i) Any parcel of land that is five acres or more but less than twenty acres devoted primarily to agricultural uses, which has produced a gross income from agricultural uses equivalent to, as of January 1, 1993:

(A) One hundred dollars or more per acre per year for three of the five calendar years preceding the date of application for classification under this chapter for all parcels of land that are classified under this subsection or all parcels of land for which an application for classification under this subsection is made with the granting authority prior to January 1, 1993; and

(B) On or after January 1, 1993, two hundred dollars or more per acre per year for three of the five calendar years preceding the date of application for classification under this chapter;

(ii) For the purposes of (b)(i) of this subsection, "gross income from agricultural uses" includes, but is not limited to, the wholesale value of agricultural products donated to nonprofit food banks or feeding programs;

(c) Any parcel of land of less than five acres devoted primarily to agricultural uses which has produced a gross income as of January 1, 1993, of:

(i) One thousand dollars or more per year for three of the five calendar years preceding the date of application for classification under this chapter for all parcels of land that are classified under this subsection or all parcels of land for which an application for classification under this subsection is made with the granting authority prior to January 1, 1993; and

(ii) On or after January 1, 1993, fifteen hundred dollars or more per year for three of the five calendar years preceding the date of application for classification under this chapter.

Parcels of land described in (b)(i)(A) and (c)(i) of this subsection shall, upon any transfer of the property excluding a transfer to a surviving spouse, be subject to the limits of (b)(i)(B) and (c)(ii) of this subsection;

(d) Any parcel of land that is five acres or more but less than twenty acres devoted primarily to agricultural uses, which meet one of the following criteria:

(i) Has produced a gross income from agricultural uses equivalent to two hundred dollars or more per acre per year for three of the five calendar years preceding the date of application for classification under this chapter;

(ii) Has standing crops with an expectation of harvest within seven years, except as provided in (d)(iii) of this subsection, and a demonstrable investment in the production of those crops equivalent to one hundred dollars or more per acre in the current or previous calendar year. For the purposes of this subsection (2)(d)(ii), "standing crop" means Christmas trees, vineyards, fruit trees, or other perennial crops that: (A) Are planted using agricultural methods normally used in the commercial production of that particular crop; and (B) typically do not produce harvestable quantities in the initial years after planting; or

(iii) Has a standing crop of short rotation hardwoods with an expectation of harvest within fifteen years and a demonstrable investment in the production of those crops equivalent to one hundred dollars or more per acre in the current or previous calendar year;

(e) Any lands including incidental uses as are compatible with agricultural purposes, including wetlands preservation, provided such incidental use does not exceed twenty percent of the classified land and the land on which appurtenances necessary to the production, preparation, or sale of the agricultural products exist in conjunction with the lands producing such products. Agricultural lands shall also include any parcel of land of one to five acres, which is not contiguous, but which otherwise constitutes an integral part of farming operations being conducted on land qualifying under this section as "farm and agricultural lands";

(f) The land on which housing for employees and the principal place of residence of the farm operator or owner of land classified pursuant to (a) of this subsection is sited if: The housing or residence is on or contiguous to the classified

parcel; and the use of the housing or the residence is integral to the use of the classified land for agricultural purposes; or

(g) Any land that is used primarily for equestrian related activities for which a charge is made, including, but not limited to, stabling, training, riding, clinics, schooling, shows, or grazing for feed and that otherwise meet the requirements of (a), (b), or (c) of this subsection.

(3) "Timber land" means any parcel of land that is five or more acres or multiple parcels of land that are contiguous and total five or more acres which is or are devoted primarily to the growth and harvest of timber for commercial purposes. Timber land means the land only and does not include a residential homesite. The term includes land used for incidental uses that are compatible with the growing and harvesting of timber but no more than ten percent of the land may be used for such incidental uses. It also includes the land on which appurtenances necessary for the production, preparation, or sale of the timber products exist in conjunction with land producing these products.

(4) "Current" or "currently" means as of the date on which property is to be listed and valued by the assessor.

(5) "Owner" means the party or parties having the fee interest in land, except that where land is subject to real estate contract "owner" shall mean the contract vendee.

(6) "Contiguous" means land adjoining and touching other property held by the same ownership. Land divided by a public road, but otherwise an integral part of a farming operation, shall be considered contiguous.

(7) "Granting authority" means the appropriate agency or official who acts on an application for classification of land pursuant to this chapter.

(8) "Farm and agricultural conservation land" means either:

(a) Land that was previously classified under subsection (2) of this section, that no longer meets the criteria of subsection (2) of this section, and that is reclassified under subsection (1) of this section; or

(b) Land that is traditional farmland that is not classified under chapter 84.33 or 84.34 RCW, that has not been irrevocably devoted to a use inconsistent with agricultural uses, and that has a high potential for returning to commercial agriculture. [2009 c 513 § 1; 2009 c 255 § 1; 2005 c 57 § 1; 2004 c 217 § 1; 2002 c 315 § 1; 2001 c 249 § 12; 1998 c 320 § 7; 1997 c 429 § 31; 1992 c 69 § 4; 1988 c 253 § 3; 1983 c 3 § 227; 1973 1st ex.s. c 212 § 2; 1970 ex.s. c 87 § 2.]

Reviser's note: This section was amended by 2009 c 255 § 1 and by 2009 c 513 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Purpose—2004 c 217 § 1: "The purpose of the amendatory language in section 1 of this act is to clarify the timber land definition as it relates to tax issues. The language does not affect land use policy or law." [2004 c 217 § 2.]

Severability—1997 c 429: See note following RCW 36.70A.3201.

84.34.037 Applications for current use classification—To whom made—Factors—Review. (1) Applications for classification or reclassification under RCW 84.34.020(1) shall be made to the county legislative authority. An application made for classification or reclassification of land under RCW 84.34.020(1) (b) and (c) which is in an area subject to a comprehensive plan shall be acted upon in the same manner in which an amendment to the comprehensive plan is processed. Application made for classification of land which is in an area not subject to a comprehensive plan shall be acted upon after a public hearing and after notice of the hearing shall have been given by one publication in a newspaper of general circulation in the area at least ten days before the hearing: PROVIDED, That applications for classification of land in an incorporated area shall be acted upon by: (a) A granting authority composed of three members of the county legislative body and three members of the city legislative body in which the land is located in a meeting where members may be physically absent but participating through telephonic connection; or (b) separate affirmative acts by both the county and city legislative bodies where both bodies affirm the entirety of an application without modification or both bodies affirm an application with identical modifications.

(2) In determining whether an application made for classification or reclassification under RCW 84.34.020(1) (b) and (c) should be approved or disapproved, the granting authority may take cognizance of the benefits to the general welfare of preserving the current use of the property which is the subject of application, and shall consider:

(a) The resulting revenue loss or tax shift;

(b) Whether granting the application for land applying under RCW 84.34.020(1)(b) will (i) conserve or enhance natural, cultural, or scenic resources, (ii) protect streams, stream corridors, wetlands, natural shorelines and aquifers, (iii) protect soil resources and unique or critical wildlife and native plant habitat, (iv) promote conservation principles by example or by offering educational opportunities, (v) enhance the value of abutting or neighboring parks, forests, wildlife preserves, nature reservations, sanctuaries, or other open spaces, (vi) enhance recreation opportunities, (vii) preserve historic and archaeological sites, (viii) preserve visual quality along highway, road, and street corridors or scenic vistas, (ix) affect any other factors relevant in weighing benefits to the general welfare of preserving the current use of the property; and

(c) Whether granting the application for land applying under RCW 84.34.020(1)(c) will (i) either preserve land previously classified under RCW 84.34.020(2) or preserve land that is traditional farmland and not classified under chapter 84.33 or 84.34 RCW, (ii) preserve land with a potential for returning to commercial agriculture, and (iii) affect any other factors relevant in weighing benefits to the general welfare of preserving the current use of property.

(3) If a public benefit rating system is adopted under RCW 84.34.055, the county legislative authority shall rate property for which application for classification has been made under RCW 84.34.020(1) (b) and (c) according to the public benefit rating system in determining whether an application should be approved or disapproved, but when such a system is adopted, open space properties then classified under this chapter which do not qualify under the system shall not be removed from classification but may be rated according to the public benefit rating system.

(4) The granting authority may approve the application with respect to only part of the land which is the subject of the application. If any part of the application is denied, the applicant may withdraw the entire application. The granting authority in approving in part or whole an application for land

classified or reclassified pursuant to RCW 84.34.020(1) may also require that certain conditions be met, including but not limited to the granting of easements. As a condition of granting open space classification, the legislative body may not require public access on land classified under RCW 84.34.020(1)(b)(iii) for the purpose of promoting conservation of wetlands.

(5) The granting or denial of the application for current use classification or reclassification is a legislative determination and shall be reviewable only for arbitrary and capricious actions. [2009 c 350 § 13; 1992 c 69 § 6; 1985 c 393 § 1; 1984 c 111 § 1; 1973 1st ex.s. c 212 § 5.]

84.34.041 Application for current use classification—Forms—Public hearing—Approval or denial. An application for current use classification or reclassification under RCW 84.34.020(3) shall be made to the county legislative authority.

(1) The application shall be made upon forms prepared by the department of revenue and supplied by the granting authority and shall include the following elements that constitute a timber management plan:

(a) A legal description of, or assessor's parcel numbers for, all land the applicant desires to be classified as timber land;

(b) The date or dates of acquisition of the land;

(c) A brief description of the timber on the land, or if the timber has been harvested, the owner's plan for restocking;

(d) Whether there is a forest management plan for the land;

(e) If so, the nature and extent of implementation of the plan;

(f) Whether the land is used for grazing;

(g) Whether the land has been subdivided or a plat filed with respect to the land;

(h) Whether the land and the applicant are in compliance with the restocking, forest management, fire protection, insect and disease control, weed control, and forest debris provisions of Title 76 RCW or applicable rules under Title 76 RCW;

(i) Whether the land is subject to forest fire protection assessments pursuant to RCW 76.04.610;

(j) Whether the land is subject to a lease, option, or other right that permits it to be used for a purpose other than growing and harvesting timber;

(k) A summary of the past experience and activity of the applicant in growing and harvesting timber;

(l) A summary of current and continuing activity of the applicant in growing and harvesting timber;

(m) A statement that the applicant is aware of the potential tax liability involved when the land ceases to be classified as timber land.

(2) An application made for classification of land under RCW 84.34.020(3) shall be acted upon after a public hearing and after notice of the hearing is given by one publication in a newspaper of general circulation in the area at least ten days before the hearing. Application for classification of land in an incorporated area shall be acted upon by: (a) A granting authority composed of three members of the county legislative body and three members of the city legislative body in which the land is located in a meeting where members may be physically absent but participating through telephonic connection; or (b) separate affirmative acts by both the county and city legislative bodies where both bodies affirm the entirety of an application without modification or both bodies affirm an application with identical modifications.

(3) The granting authority shall act upon the application with due regard to all relevant evidence and without any one or more items of evidence necessarily being determinative, except that the application may be denied for one of the following reasons, without regard to other items:

(a) The land does not contain a stand of timber as defined in chapter 76.09 RCW and applicable rules, except this reason shall not alone be sufficient to deny the application (i) if the land has been recently harvested or supports a growth of brush or noncommercial type timber, and the application includes a plan for restocking within three years or the longer period necessitated by unavailability of seed or seedlings, or (ii) if only isolated areas within the land do not meet minimum standards due to rock outcroppings, swamps, unproductive soil, or other natural conditions;

(b) The applicant, with respect to the land, has failed to comply with a final administrative or judicial order with respect to a violation of the restocking, forest management, fire protection, insect and disease control, weed control, and forest debris provisions of Title 76 RCW or applicable rules under Title 76 RCW;

(c) The land abuts a body of salt water and lies between the line of ordinary high tide and a line paralleling the ordinary high tide line and two hundred feet horizontally landward from the high tide line.

(4) The timber management plan must be filed with the county legislative authority either: (a) When an application for classification under this chapter is submitted; (b) when a sale or transfer of timber land occurs and a notice of continuance is signed; or (c) within sixty days of the date the application for reclassification under this chapter or from designated forest land is received. The application for reclassification shall be accepted, but shall not be processed until the timber management plan is received. If the timber management plan is not received within sixty days of the date the application for reclassification is received, the application for reclassification shall be denied.

If circumstances require it, the county assessor may allow in writing an extension of time for submitting a timber management plan when an application for classification or reclassification or notice of continuance is filed. When the assessor approves an extension of time for filing the timber management plan, the county legislative authority may delay processing an application until the timber management plan is received. If the timber management plan is not received by the date set by the assessor, the application or the notice of continuance shall be denied.

The granting authority may approve the application with respect to only part of the land that is described in the application, and if any part of the application is denied, the applicant may withdraw the entire application. The granting authority, in approving in part or whole an application for land classified pursuant to RCW 84.34.020(3), may also require that certain conditions be met.

Granting or denial of an application for current use classification is a legislative determination and shall be review-

able only for arbitrary and capricious actions. The granting authority may not require the granting of easements for land classified pursuant to RCW 84.34.020(3).

The granting authority shall approve or disapprove an application made under this section within six months following the date the application is received. [2009 c 350 § 14; 2002 c 315 § 2; 1992 c 69 § 20.]

84.34.108 Removal of classification—Factors—Notice of continuance—Additional tax—Lien—Delinquencies—Exemptions. (1) When land has once been classified under this chapter, a notation of the classification shall be made each year upon the assessment and tax rolls and the land shall be valued pursuant to RCW 84.34.060 or 84.34.065 until removal of all or a portion of the classification by the assessor upon occurrence of any of the following:

(a) Receipt of notice from the owner to remove all or a portion of the classification;

(b) Sale or transfer to an ownership, except a transfer that resulted from a default in loan payments made to or secured by a governmental agency that intends to or is required by law or regulation to resell the property for the same use as before, making all or a portion of the land exempt from ad valorem taxation;

(c) Sale or transfer of all or a portion of the land to a new owner, unless the new owner has signed a notice of classification continuance, except transfer to an owner who is an heir or devisee of a deceased owner shall not, by itself, result in removal of classification. The notice of continuance shall be on a form prepared by the department. If the notice of continuance is not signed by the new owner and attached to the real estate excise tax affidavit, all additional taxes calculated pursuant to subsection (4) of this section shall become due and payable by the seller or transferor at time of sale. The auditor shall not accept an instrument of conveyance regarding classified land for filing or recording unless the new owner has signed the notice of continuance or the additional tax has been paid, as evidenced by the real estate excise tax stamp affixed thereto by the treasurer. The seller, transferor, or new owner may appeal the new assessed valuation calculated under subsection (4) of this section to the county board of equalization in accordance with the provisions of RCW 84.40.038. Jurisdiction is hereby conferred on the county board of equalization to hear these appeals;

(d) Determination by the assessor, after giving the owner written notice and an opportunity to be heard, that all or a portion of the land no longer meets the criteria for classification under this chapter. The criteria for classification pursuant to this chapter continue to apply after classification has been granted.

The granting authority, upon request of an assessor, shall provide reasonable assistance to the assessor in making a determination whether the land continues to meet the qualifications of RCW 84.34.020 (1) or (3). The assistance shall be provided within thirty days of receipt of the request.

(2) Land may not be removed from classification because of:

(a) The creation, sale, or transfer of forestry riparian easements under RCW 76.13.120; or

(b) The creation, sale, or transfer of a fee interest or a conservation easement for the riparian open space program under RCW 76.09.040.

(3) Within thirty days after the removal of all or a portion of the land from current use classification under subsection (1) of this section, the assessor shall notify the owner in writing, setting forth the reasons for the removal. The seller, transferor, or owner may appeal the removal to the county board of equalization in accordance with the provisions of RCW 84.40.038. The removal notice must explain the steps needed to appeal the removal decision, including when a notice of appeal must be filed, where the forms may be obtained, and how to contact the county board of equalization.

(4) Unless the removal is reversed on appeal, the assessor shall revalue the affected land with reference to its true and fair value on January 1st of the year of removal from classification. Both the assessed valuation before and after the removal of classification shall be listed and taxes shall be allocated according to that part of the year to which each assessed valuation applies. Except as provided in subsection (6) of this section, an additional tax, applicable interest, and penalty shall be imposed which shall be due and payable to the treasurer thirty days after the owner is notified of the amount of the additional tax. As soon as possible, the assessor shall compute the amount of additional tax, applicable interest, and penalty and the treasurer shall mail notice to the owner of the amount thereof and the date on which payment is due. The amount of the additional tax, applicable interest, and penalty shall be determined as follows:

(a) The amount of additional tax shall be equal to the difference between the property tax paid as "open space land," "farm and agricultural land," or "timber land" and the amount of property tax otherwise due and payable for the seven years last past had the land not been so classified;

(b) The amount of applicable interest shall be equal to the interest upon the amounts of the additional tax paid at the same statutory rate charged on delinquent property taxes from the dates on which the additional tax could have been paid without penalty if the land had been assessed at a value without regard to this chapter;

(c) The amount of the penalty shall be as provided in RCW 84.34.080. The penalty shall not be imposed if the removal satisfies the conditions of RCW 84.34.070.

(5) Additional tax, applicable interest, and penalty, shall become a lien on the land which shall attach at the time the land is removed from classification under this chapter and shall have priority to and shall be fully paid and satisfied before any recognizance, mortgage, judgment, debt, obligation or responsibility to or with which the land may become charged or liable. This lien may be foreclosed upon expiration of the same period after delinquency and in the same manner provided by law for foreclosure of liens for delinquent real property taxes as provided in RCW 84.64.050. Any additional tax unpaid on its due date shall thereupon become delinquent. From the date of delinquency until paid, interest shall be charged at the same rate applied by law to delinquent ad valorem property taxes.

(6) The additional tax, applicable interest, and penalty specified in subsection (4) of this section shall not be

imposed if the removal of classification pursuant to subsection (1) of this section resulted solely from:

(a) Transfer to a government entity in exchange for other land located within the state of Washington;

(b)(i) A taking through the exercise of the power of eminent domain, or (ii) sale or transfer to an entity having the power of eminent domain in anticipation of the exercise of such power, said entity having manifested its intent in writing or by other official action;

(c) A natural disaster such as a flood, windstorm, earthquake, or other such calamity rather than by virtue of the act of the landowner changing the use of the property;

(d) Official action by an agency of the state of Washington or by the county or city within which the land is located which disallows the present use of the land;

(e) Transfer of land to a church when the land would qualify for exemption pursuant to RCW 84.36.020;

(f) Acquisition of property interests by state agencies or agencies or organizations qualified under RCW 84.34.210 and 64.04.130 for the purposes enumerated in those sections. At such time as these property interests are not used for the purposes enumerated in RCW 84.34.210 and 64.04.130 the additional tax specified in subsection (4) of this section shall be imposed;

(g) Removal of land classified as farm and agricultural land under RCW 84.34.020(2)(f);

(h) Removal of land from classification after enactment of a statutory exemption that qualifies the land for exemption and receipt of notice from the owner to remove the land from classification;

(i) The creation, sale, or transfer of forestry riparian easements under RCW 76.13.120;

(j) The creation, sale, or transfer of a conservation easement of private forest lands within unconfined channel migration zones or containing critical habitat for threatened or endangered species under RCW 76.09.040;

(k) The sale or transfer of land within two years after the death of the owner of at least a fifty percent interest in the land if the land has been assessed and valued as classified forest land, designated as forest land under chapter 84.33 RCW, or classified under this chapter continuously since 1993. The date of death shown on a death certificate is the date used for the purposes of this subsection (6)(k); or

(l)(i) The discovery that the land was classified under this chapter in error through no fault of the owner. For purposes of this subsection (6)(l), "fault" means a knowingly false or misleading statement, or other act or omission not in good faith, that contributed to the approval of classification under this chapter or the failure of the assessor to remove the land from classification under this chapter.

(ii) For purposes of this subsection (6), the discovery that land was classified under this chapter in error through no fault of the owner is not the sole reason for removal of classification pursuant to subsection (1) of this section if an independent basis for removal exists. Examples of an independent basis for removal include the owner changing the use of the land or failing to meet any applicable income criteria required for classification under this chapter. [2009 c 513 § 2; 2009 c 354 § 3; 2009 c 255 § 2; 2009 c 246 § 3; 2007 c 54 § 25; 2003 c 170 § 6. Prior: 2001 c 305 § 3; 2001 c 249 § 14; 2001 c 185 § 7; prior: 1999 sp.s. c 4 § 706; 1999 c 233 § 22; 1999 c 139 § 2; 1992 c 69 § 12; 1989 c 378 § 35; 1985 c 319 § 1; 1983 c 41 § 1; 1980 c 134 § 5; 1973 1st ex.s. c 212 § 12.]

Reviser's note: This section was amended by 2009 c 246 § 3, 2009 c 255 § 2, 2009 c 354 § 3, and by 2009 c 513 § 2, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Finding—Intent—2009 c 354: See note following RCW 84.33.140.

Severability—2007 c 54: See note following RCW 82.04.050.

Purpose—2003 c 170 § 6: "During the regular session of the 2001 legislature, RCW 84.34.108 was amended by section 7, chapter 185, by section 14, chapter 249, and by section 3, chapter 305, each without reference to the other. The purpose of section 6 of this act is to reenact and amend RCW 84.34.108 so that it reflects all amendments made by the legislature and to clarify any misunderstanding as to how the exemption contained in chapter 305, Laws of 2001 is to be applied." [2003 c 170 § 3.]

Purpose—Intent—2003 c 170: See note following RCW 84.33.130.

Application—2001 c 185 §§ 1-12: See note following RCW 84.14.110.

Part headings not law—1999 sp.s. c 4: See note following RCW 77.85.180.

Effective date—1999 c 233: See note following RCW 4.28.320.

84.34.250 Nonprofit nature conservancy corporation or association defined. As used in RCW 84.34.210, as now or hereafter amended, RCW 84.34.220, as now or hereafter amended, and RCW 79A.15.010, "nonprofit nature conservancy corporation or association" means an organization which qualifies as being tax exempt under 26 U.S.C. section 501(c) (of the Internal Revenue Code) as it exists on June 25, 1976 and one which has as one of its principal purposes the conducting or facilitating of scientific research; the conserving of natural resources, including but not limited to biological resources, for the general public; or the conserving of open spaces, including but not limited to wildlife habitat to be utilized as public access areas, for the use and enjoyment of the general public. [2009 c 341 § 6; 1975-'76 2nd ex.s. c 22 § 4.]

Chapter 84.36 RCW
EXEMPTIONS

Sections

84.36.060 Art, scientific and historical collections and property used to maintain, etc., such collections—Property of associations engaged in production and performance of musical, dance, artistic, etc., works—Fire engines, implements, and buildings of cities, towns, or fire companies—Humane societies.
84.36.260 Property, interests, etc., used for conservation of ecological systems, natural resources, or open space—Conservation or scientific research organizations.

84.36.060 Art, scientific and historical collections and property used to maintain, etc., such collections—Property of associations engaged in production and performance of musical, dance, artistic, etc., works—Fire engines, implements, and buildings of cities, towns, or fire companies—Humane societies. (1) The following property shall be exempt from taxation:

(a) All art, scientific, or historical collections of associations maintaining and exhibiting such collections for the benefit of the general public and not for profit, together with all real and personal property of such associations used exclusively for the safekeeping, maintaining and exhibiting of such collections;

(b) All the real and personal property owned by or leased to associations engaged in the production and performance of musical, dance, artistic, dramatic, or literary works for the benefit of the general public and not for profit, which real and personal property is used exclusively for this production or performance;

(c) All fire engines and other implements used for the extinguishment of fire, and the buildings used exclusively for their safekeeping, and for meetings of fire companies, as long as the property belongs to any city or town or to a fire company; and

(d) All property owned by humane societies in this state in actual use by the societies.

(2) To receive an exemption under subsection (1)(a) or (b) of this section:

(a) An organization must be organized and operated exclusively for artistic, scientific, historical, literary, musical, dance, dramatic, or educational purposes and receive a substantial part of its support (exclusive of income received in the exercise or performance by such organization of its purpose or function) from the United States or any state or any political subdivision thereof or from direct or indirect contributions from the general public.

(b) If the property is not currently being used for an exempt purpose but will be used for an exempt purpose within a reasonable period of time, the nonprofit organization, association, or corporation claiming the exemption must submit proof that a reasonably specific and active program is being carried out to construct, remodel, or otherwise enable the property to be used for an exempt purpose. The property does not qualify for an exemption during this interim period if the property is used by, loaned to, or rented to a for-profit organization or business enterprise. Proof of a specific and active program to build or remodel the property so it may be used for an exempt purpose may include, but is not limited to:

(i) Affirmative action by the board of directors, trustees, or governing body of the nonprofit organization, association, or corporation toward an active program of construction or remodeling;

(ii) Itemized reasons for the proposed construction or remodeling;

(iii) Clearly established plans for financing the construction or remodeling; or

(iv) Building permits.

(3) The use of property exempt under subsection (1)(a) or (b) of this section by entities not eligible for a property tax exemption under this chapter, except as provided in this section, nullifies the exemption otherwise available for the property for the assessment year. The exemption is not nullified if:

(a) The property is used by entities not eligible for a property tax exemption under this chapter for periods of not more than fifty days in the calendar year;

(b) The property is not used for pecuniary gain or to promote business activities for more than fifteen of the fifty days in the calendar year; and

(c) The property is used for artistic, scientific, or historic purposes, for the production and performance of musical, dance, artistic, dramatic, or literary works, or for community gatherings or assembly, or meetings.

(4) The fifty and fifteen-day limitations in subsection (3) of this section do not include days used for setup and takedown activities preceding or following a meeting or other event by an entity using the property as provided in subsection (3) of this section. [2009 c 58 § 1; 2003 c 121 § 1; 1995 c 306 § 1; 1981 c 141 § 1; 1973 2nd ex.s. c 40 § 5; 1961 c 15 § 84.36.060. Prior: 1955 c 196 § 8; prior: 1939 c 206 § 8, part; 1933 ex.s. c 19 § 1, part; 1933 c 115 § 1, part; 1929 c 126 § 1, part; 1925 ex.s. c 130 § 7, part; 1915 c 131 § 1, part; 1903 c 178 § 1, part; 1901 c 176 § 1, part; 1899 c 141 § 2, part; 1897 c 71 §§ 1, 5, part; 1895 c 176 § 2, part; 1893 c 124 §§ 1, 5, part; 1891 c 140 §§ 1, 5, part; 1890 p 532 §§ 1, 5, part; 1886 p 47 § 1, part; Code 1881 § 2829, part; 1871 p 37 § 4, part; 1869 p 176 § 4, part; 1867 p 61 § 2, part; 1854 p 331 § 2, part; RRS § 11111, part. Formerly RCW 84.40.010.]

Applicability—1995 c 306: "The [This] act is effective for taxes levied for collection in 1995 and thereafter." [1995 c 306 § 2.]

Effective date—1995 c 306: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 9, 1995]." [1995 c 306 § 3.]

Applicability, construction—1981 c 141: "This act shall apply to taxes payable in 1982 and in subsequent years and shall be strictly construed." [1981 c 141 § 6.]

84.36.260 Property, interests, etc., used for conservation of ecological systems, natural resources, or open space—Conservation or scientific research organizations. All real property interests, including fee simple or any lesser interest, development rights, easements, covenants and conservation futures, as that latter term is defined in RCW 84.34.220 as now or hereafter amended, used exclusively for the conservation of ecological systems, natural resources, or open space, including park lands, held by any nonprofit corporation or association the primary purpose of which is the conducting or facilitating of scientific research or the conserving of natural resources or open space for the general public, shall be exempt from ad valorem taxation if either of the following conditions are met:

(1) To the extent feasible considering the nature of the property interest involved, such property interests shall be used and effectively dedicated primarily for the purpose of providing scientific research or educational opportunities for the general public or the preservation of native plants or animals, or biotic communities, or works of ancient human beings or geological or geographical formations, of distinct scientific and educational interest, and not for the pecuniary benefit of any person or company, as defined in RCW 82.04.030, and shall be open to the general public for educational and scientific research purposes subject to reasonable restrictions designed for its protection; or

(2) Such property interests shall be subject to an option, accepted in writing by the state, a city or a county, or department of the United States government, for the purchase thereof by the state, a city or a county, or the United States, at a price not exceeding the lesser of the following amounts: (a) The sum of the original purchase cost to such nonprofit corporation or association plus interest from the date of acquisition by such corporation or association at the rate of six percent per annum compounded annually to the date of the exercise of the option; or (b) the appraised value of the property at the time of the granting of the option, as determined by the

department of revenue or when the option is held by the United States, or by an appropriate agency thereof. [2009 c 549 § 1034; 1979 ex.s. c 193 § 1; 1975-'76 2nd ex.s. c 22 § 3; 1973 c 112 § 1; 1967 ex.s. c 149 § 43.]

Savings—1967 ex.s. c 149: See RCW 82.98.035.

Severability—1967 ex.s. c 149: See note following RCW 82.98.030.

Chapter 84.40 RCW
LISTING OF PROPERTY

Sections

84.40.042 Valuation and assessment of divided or combined property.

84.40.042 Valuation and assessment of divided or combined property. (1) When real property is divided in accordance with chapter 58.17 RCW, the assessor shall carefully investigate and ascertain the true and fair value of each lot and assess each lot on that same basis, unless specifically provided otherwise by law. For purposes of this section, "lot" has the same definition as in RCW 58.17.020.

(a) For each lot on which an advance tax deposit has been paid in accordance with RCW 58.08.040, the assessor shall establish the true and fair value by October 30th of the year following the recording of the plat, replat, or altered plat. The value established shall be the value of the lot as of January 1st of the year the original parcel of real property was last revalued. An additional property tax shall not be due on the land until the calendar year following the year for which the advance tax deposit was paid if the deposit was sufficient to pay the full amount of the taxes due on the property.

(b) For each lot on which an advance tax deposit has not been paid, the assessor shall establish the true and fair value not later than the calendar year following the recording of the plat, map, subdivision, or replat. For purposes of this section, "subdivision" means a division of land into two or more lots.

(c) For each subdivision, all current year and delinquent taxes and assessments on the entire tract must be paid in full in accordance with RCW 58.17.160 and 58.08.030 except when property is being acquired by a government for public use. For purposes of this section, "current year taxes" means taxes that are collectible under RCW 84.56.010 subsequent to completing the tax roll for current year collection.

(2) When the assessor is required by law to segregate any part or parts of real property, assessed before or after July 27, 1997, as one parcel or when the assessor is required by law to combine parcels of real property assessed before or after July 27, 1997, as two or more parcels, the assessor shall carefully investigate and ascertain the true and fair value of each part or parts of the real property and each combined parcel and assess each part or parts or each combined parcel on that same basis. [2009 c 350 § 1; 2008 c 17 § 1; 2002 c 168 § 8; 1997 c 393 § 17.]

Chapter 84.41 RCW
REVALUATION OF PROPERTY

Sections

84.41.030 Revaluation program to be on continuous basis—Revaluation schedule—Effect of other proceedings on valuation.
84.41.041 Physical inspection and valuation of taxable property required—Adjustments during intervals based on statistical data.
84.41.170 Annual property revaluation grant account. *(Expires July 1, 2014.)*
84.41.180 Annual property revaluation grant program administration. *(Expires July 1, 2014.)*

84.41.030 Revaluation program to be on continuous basis—Revaluation schedule—Effect of other proceedings on valuation. (1) Each county assessor shall maintain an active and systematic program of revaluation on a continuous basis, and shall establish a revaluation schedule which will result in revaluation of all taxable real property within the county at least once each four years and physical inspection of all taxable real property within the county at least once each six years. Each county assessor may disregard any program of revaluation, if requested by a property owner, and change, as appropriate, the valuation of real property upon the receipt of a notice of decision received under RCW 36.70B.130 or chapter 35.22, 35.63, 35A.63, or 36.70 RCW pertaining to the value of the real property.

(2) Not later than January 1, 2014, all taxable real property within a county must be revalued annually and all taxable real property within a county must be physically inspected at least once each six years. This mandate is conditional upon the department of revenue providing the necessary guidance and financial assistance to those counties that are not on an annual revaluation cycle so that they may convert to an annual revaluation cycle including, but not limited to, appropriate data collection methods and coding, neighborhood and market delineation, statistical analysis, valuation guidelines, and training. The department will provide advisory appraisals of industrial properties valued at twenty-five million dollars or more in real and personal property value when requested by the county assessor.

(3) In recognition of the need for immediate action, the department of revenue is directed to conduct a pilot project on at least one county that is prepared to move from cyclical to annual revaluation by December 31, 2009. The pilot project will develop the expertise necessary to provide counties with neighborhood and market delineation, statistical analysis, valuation guidelines, and training. The department of revenue must use the expertise gained in this pilot project to facilitate the conversion of cyclical counties to annual revaluation and ongoing refinement of assessment processes statewide. The department may contract with a local government association representing county assessors and other county elected officials in carrying out the requirements of this subsection. [2009 c 308 § 1; 1996 c 254 § 7; 1982 1st ex.s. c 46 § 1; 1971 ex.s. c 288 § 6; 1961 c 15 § 84.41.030. Prior: 1955 c 251 § 3.]

Savings—Severability—1971 ex.s. c 288: See notes following RCW 84.40.030.

84.41.041 Physical inspection and valuation of taxable property required—Adjustments during intervals based on statistical data. Each county assessor shall cause taxable real property to be physically inspected and valued at least once every six years in accordance with RCW 84.41.030, and in accordance with a plan filed with and approved by the department of revenue. Such revaluation plan shall provide that a reasonable portion of all taxable real

property within a county shall be revalued and these newly determined values placed on the assessment rolls each year. Until January 1, 2014, the department may approve a plan that provides that all property in the county be revalued every two years. If the revaluation plan provides for physical inspection at least once each four years, during the intervals between each physical inspection of real property, the valuation of such property may be adjusted to its current true and fair value, such adjustments to be based upon appropriate statistical data. If the revaluation plan provides for physical inspection less frequently than once each four years, during the intervals between each physical inspection of real property, the valuation of such property shall be adjusted to its current true and fair value, such adjustments to be made once each year and to be based upon appropriate statistical data.

The assessor may require property owners to submit pertinent data respecting taxable property in their control including data respecting any sale or purchase of said property within the past five years, the cost and characteristics of any improvement on the property and other facts necessary for appraisal of the property. [2009 c 308 § 2; 2001 c 187 § 21; 1997 c 3 § 108 (Referendum Bill No. 47, approved November 4, 1997); 1987 c 319 § 4; 1982 1st ex.s. c 46 § 2; 1979 ex.s. c 214 § 9; 1974 ex.s. c 131 § 2.]

Contingent effective date—2001 c 187: See note following RCW 84.70.010.

Application—2001 c 187: See note following RCW 84.40.020.

Application—Severability—Part headings not law—Referral to electorate—1997 c 3: See notes following RCW 84.40.030.

84.41.170 Annual property revaluation grant account. ***(Expires July 1, 2014.)*** (1) The annual property revaluation grant account is created in the custody of the state treasurer. Moneys from RCW 82.45.180(4) must be deposited into the account. An appropriation is not required for expenditures and the account is not subject to allotment procedures under chapter 43.88 RCW. Moneys in the account may be used only for grants as provided in RCW 84.41.180.

(2) Any funds remaining in the annual property revaluation grant account on July 1, 2014, must be deposited in the real estate and property tax administration assistance account created in RCW 82.45.180(5).

(3) This section expires July 1, 2014. [2009 c 308 § 3.]

84.41.180 Annual property revaluation grant program administration. ***(Expires July 1, 2014.)*** (1) The department of revenue shall administer a grant program to assist counties with, in priority order: (a) Converting to an annual revaluation system for property tax valuation; (b) replacing computer software used for revaluations in counties where the software was purchased from commercial vendors and will not be supported by the vendor or others after January 1, 2010; or (c) the acquisition of software and integral hardware in counties currently administering an annual revaluation program where the assessor's property records are not stored in an electronic format or where the current software does not have the capacity to store, manage, and process property record components used in the valuation process. A county may use grant money to purchase computer hardware or software, repair or upgrade existing computer hardware or software, or provide necessary training related to computer hardware or software. No county is eligible for grants under this section totaling more than five hundred thousand dollars.

(2) This section expires July 1, 2014. [2009 c 308 § 4.]

Chapter 84.52 RCW
LEVY OF TAXES

Sections

84.52.010 Taxes levied or voted in specific amounts—Effect of constitutional and statutory limitations.
84.52.043 Limitations upon regular property tax levies.
84.52.053 Levies by school districts authorized—When—Procedure.
84.52.0531 Levies by school districts—Maximum dollar amount for maintenance and operation support—Restrictions—Maximum levy percentage—Levy reduction funds—Rules. *(Expires January 1, 2012.)*
84.52.067 State levy for support of common schools—Disposition of funds.
84.52.068 Repealed.
84.52.140 Additional regular property tax levy authorized.

84.52.010 Taxes levied or voted in specific amounts—Effect of constitutional and statutory limitations. Except as is permitted under RCW 84.55.050, all taxes shall be levied or voted in specific amounts.

The rate percent of all taxes for state and county purposes, and purposes of taxing districts coextensive with the county, shall be determined, calculated and fixed by the county assessors of the respective counties, within the limitations provided by law, upon the assessed valuation of the property of the county, as shown by the completed tax rolls of the county, and the rate percent of all taxes levied for purposes of taxing districts within any county shall be determined, calculated and fixed by the county assessors of the respective counties, within the limitations provided by law, upon the assessed valuation of the property of the taxing districts respectively.

When a county assessor finds that the aggregate rate of tax levy on any property, that is subject to the limitations set forth in RCW 84.52.043 or 84.52.050, exceeds the limitations provided in either of these sections, the assessor shall recompute and establish a consolidated levy in the following manner:

(1) The full certified rates of tax levy for state, county, county road district, and city or town purposes shall be extended on the tax rolls in amounts not exceeding the limitations established by law; however any state levy shall take precedence over all other levies and shall not be reduced for any purpose other than that required by RCW 84.55.010. If, as a result of the levies imposed under RCW 36.54.130, 84.34.230, 84.52.069, 84.52.105, the portion of the levy by a metropolitan park district that was protected under RCW 84.52.120, 84.52.125, 84.52.135, and 84.52.140, the combined rate of regular property tax levies that are subject to the one percent limitation exceeds one percent of the true and fair value of any property, then these levies shall be reduced as follows:

(a) The levy imposed by a county under RCW 84.52.140 shall be reduced until the combined rate no longer exceeds one percent of the true and fair value of any property or shall be eliminated;

(b) If the combined rate of regular property tax levies that are subject to the one percent limitation still exceeds one

percent of the true and fair value of any property, the portion of the levy by a fire protection district that is protected under RCW 84.52.125 shall be reduced until the combined rate no longer exceeds one percent of the true and fair value of any property or shall be eliminated;

(c) If the combined rate of regular property tax levies that are subject to the one percent limitation still exceeds one percent of the true and fair value of any property, the levy imposed by a county under RCW 84.52.135 must be reduced until the combined rate no longer exceeds one percent of the true and fair value of any property or must be eliminated;

(d) If the combined rate of regular property tax levies that are subject to the one percent limitation still exceeds one percent of the true and fair value of any property, the levy imposed by a ferry district under RCW 36.54.130 must be reduced until the combined rate no longer exceeds one percent of the true and fair value of any property or must be eliminated;

(e) If the combined rate of regular property tax levies that are subject to the one percent limitation still exceeds one percent of the true and fair value of any property, the portion of the levy by a metropolitan park district that is protected under RCW 84.52.120 shall be reduced until the combined rate no longer exceeds one percent of the true and fair value of any property or shall be eliminated;

(f) If the combined rate of regular property tax levies that are subject to the one percent limitation still exceeds one percent of the true and fair value of any property, then the levies imposed under RCW 84.34.230, 84.52.105, and any portion of the levy imposed under RCW 84.52.069 that is in excess of thirty cents per thousand dollars of assessed value, shall be reduced on a pro rata basis until the combined rate no longer exceeds one percent of the true and fair value of any property or shall be eliminated; and

(g) If the combined rate of regular property tax levies that are subject to the one percent limitation still exceeds one percent of the true and fair value of any property, then the thirty cents per thousand dollars of assessed value of tax levy imposed under RCW 84.52.069 shall be reduced until the combined rate no longer exceeds one percent of the true and fair value of any property or eliminated.

(2) The certified rates of tax levy subject to these limitations by all junior taxing districts imposing taxes on such property shall be reduced or eliminated as follows to bring the consolidated levy of taxes on such property within the provisions of these limitations:

(a) First, the certified property tax levy rates of those junior taxing districts authorized under RCW 36.68.525, 36.69.145, 35.95A.100, and 67.38.130 shall be reduced on a pro rata basis or eliminated;

(b) Second, if the consolidated tax levy rate still exceeds these limitations, the certified property tax levy rates of flood control zone districts shall be reduced on a pro rata basis or eliminated;

(c) Third, if the consolidated tax levy rate still exceeds these limitations, the certified property tax levy rates of all other junior taxing districts, other than fire protection districts, regional fire protection service authorities, library districts, the first fifty cent per thousand dollars of assessed valuation levies for metropolitan park districts, and the first fifty cent per thousand dollars of assessed valuation levies for public hospital districts, shall be reduced on a pro rata basis or eliminated;

(d) Fourth, if the consolidated tax levy rate still exceeds these limitations, the first fifty cent per thousand dollars of assessed valuation levies for metropolitan park districts created on or after January 1, 2002, shall be reduced on a pro rata basis or eliminated;

(e) Fifth, if the consolidated tax levy rate still exceeds these limitations, the certified property tax levy rates authorized to fire protection districts under RCW 52.16.140 and 52.16.160 and regional fire protection service authorities under RCW 52.26.140(1) (b) and (c) shall be reduced on a pro rata basis or eliminated; and

(f) Sixth, if the consolidated tax levy rate still exceeds these limitations, the certified property tax levy rates authorized for fire protection districts under RCW 52.16.130, regional fire protection service authorities under RCW 52.26.140(1)(a), library districts, metropolitan park districts created before January 1, 2002, under their first fifty cent per thousand dollars of assessed valuation levy, and public hospital districts under their first fifty cent per thousand dollars of assessed valuation levy, shall be reduced on a pro rata basis or eliminated. [2009 c 551 § 7; 2007 c 54 § 26; 2005 c 122 § 2. Prior: 2004 c 129 § 21; 2004 c 80 § 3; 2003 c 83 § 310; prior: 2002 c 248 § 15; 2002 c 88 § 7; 1995 2nd sp.s. c 13 § 4; 1995 c 99 § 2; 1994 c 124 § 36; 1993 c 337 § 4; 1990 c 234 § 4; 1988 c 274 § 7; 1987 c 255 § 1; 1973 1st ex.s. c 195 § 101; 1973 1st ex.s. c 195 § 146; 1971 ex.s. c 243 § 6; 1970 ex.s. c 92 § 4; 1961 c 15 § 84.52.010; prior: 1947 c 270 § 1; 1925 ex.s. c 130 § 74; Rem. Supp. 1947 § 11235; prior: 1920 ex.s. c 3 § 1; 1897 c 71 § 62; 1893 c 124 § 63.]

Severability—2007 c 54: See note following RCW 82.04.050.

Application—2005 c 122: See note following RCW 84.52.125.

Captions not law—Severability—2004 c 129: See RCW 52.26.900 and 52.26.901.

Effective date—2004 c 80: See note following RCW 84.52.135.

Findings—Intent—Captions, part headings not law—Severability—Effective date—2003 c 83: See notes following RCW 36.57A.200.

Intent—1995 2nd sp.s. c 13: See note following RCW 84.48.080.

Finding—1993 c 337: See note following RCW 84.52.105.

Purpose—1988 c 274: "The legislature finds that, due to statutory and constitutional limitations, the interdependence of the regular property tax levies of the state, counties, county road districts, cities and towns, and junior taxing districts can cause significant reductions in the otherwise authorized levies of those taxing districts, resulting in serious disruptions to essential services provided by those taxing districts. The purpose of this act is to avoid unnecessary reductions in regular property tax revenue without exceeding existing statutory and constitutional tax limitations on cumulative regular property tax levy rates. The legislature declares that it is a purpose of the state, counties, county road districts, cities and towns, public hospital districts, library districts, fire protection districts, metropolitan park districts, and other taxing districts to participate in the methods provided by this act by which revenue levels supporting the services provided by all taxing districts might be maintained." [1988 c 274 § 1.]

Severability—1988 c 274: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1988 c 274 § 13.]

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

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

Intent—1970 ex.s. c 92: "It is the intent of this 1970 amendatory act to prevent a potential doubling of property taxes that might otherwise result from the enforcement of the constitutionally required fifty percent assess-

ment ratio as of January 1, 1970, and to adjust property tax millage rates for subsequent years to levels which will conform to the requirements of any constitutional amendment imposing a one percent limitation on property taxes. It is the further intent of this 1970 amendatory act that the statutory authority of any taxing district to impose excess levies shall not be impaired by reason of the reduction in millage rates for regular property tax levies. This 1970 amendatory act shall be construed to effectuate the legislative intent expressed in this section." [1970 ex.s. c 92 § 1.]

Effective date—Application—1970 ex.s. c 92: "This act shall take effect July 1, 1970 but shall not affect property taxes levied in 1969 or prior years." [1970 ex.s. c 92 § 11.]

84.52.043 Limitations upon regular property tax levies. Within and subject to the limitations imposed by RCW 84.52.050 as amended, the regular ad valorem tax levies upon real and personal property by the taxing districts hereafter named shall be as follows:

(1) Levies of the senior taxing districts shall be as follows: (a) The levy by the state shall not exceed three dollars and sixty cents per thousand dollars of assessed value adjusted to the state equalized value in accordance with the indicated ratio fixed by the state department of revenue to be used exclusively for the support of the common schools; (b) the levy by any county shall not exceed one dollar and eighty cents per thousand dollars of assessed value; (c) the levy by any road district shall not exceed two dollars and twenty-five cents per thousand dollars of assessed value; and (d) the levy by any city or town shall not exceed three dollars and thirty-seven and one-half cents per thousand dollars of assessed value. However any county is hereby authorized to increase its levy from one dollar and eighty cents to a rate not to exceed two dollars and forty-seven and one-half cents per thousand dollars of assessed value for general county purposes if the total levies for both the county and any road district within the county do not exceed four dollars and five cents per thousand dollars of assessed value, and no other taxing district has its levy reduced as a result of the increased county levy.

(2) The aggregate levies of junior taxing districts and senior taxing districts, other than the state, shall not exceed five dollars and ninety cents per thousand dollars of assessed valuation. The term "junior taxing districts" includes all taxing districts other than the state, counties, road districts, cities, towns, port districts, and public utility districts. The limitations provided in this subsection shall not apply to: (a) Levies at the rates provided by existing law by or for any port or public utility district; (b) excess property tax levies authorized in Article VII, section 2 of the state Constitution; (c) levies for acquiring conservation futures as authorized under RCW 84.34.230; (d) levies for emergency medical care or emergency medical services imposed under RCW 84.52.069; (e) levies to finance affordable housing for very low-income housing imposed under RCW 84.52.105; (f) the portions of levies by metropolitan park districts that are protected under RCW 84.52.120; (g) levies imposed by ferry districts under RCW 36.54.130; (h) levies for criminal justice purposes under RCW 84.52.135; (i) the portions of levies by fire protection districts that are protected under RCW 84.52.125; and (j) levies by counties for transit-related purposes under RCW 84.52.140. [2009 c 551 § 6; 2005 c 122 § 3; 2004 c 80 § 4; 2003 c 83 § 311; 1995 c 99 § 3; 1993 c 337 § 3; 1990 c 234 § 1; 1989 c 378 § 36; 1988 c 274 § 5; 1973 1st ex.s. c 195 § 134.]

Application—2005 c 122: See note following RCW 84.52.125.

Effective date—2004 c 80: See note following RCW 84.52.135.

Findings—Intent—Captions, part headings not law—Severability—Effective date—2003 c 83: See notes following RCW 36.57A.200.

Finding—1993 c 337: See note following RCW 84.52.105.

Purpose—Severability—1988 c 274: See notes following RCW 84.52.010.

Effective date—1973 2nd ex.s. c 4: "Sections 4 through 6 of this 1973 amendatory act shall be effective on and after January 1, 1974." [1973 2nd ex.s. c 4 § 6.]

Emergency—1973 2nd ex.s. c 4: "Except as otherwise in this 1973 amendatory act provided, this 1973 amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately." [1973 2nd ex.s. c 4 § 7.]

Construction—1973 1st ex.s. c 195: "Sections 135 through 152 of this 1973 amendatory act shall apply to tax levies made in 1973 for collection in 1974, and sections 1 through 134 shall apply to tax levies made in 1974 and each year thereafter for collection in 1975 and each year thereafter." [1973 1st ex.s. c 195 § 155.]

Severability—1973 1st ex.s. c 195: "If any provision of this 1973 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1973 1st ex.s. c 195 § 153.]

Effective dates and termination dates—1973 1st ex.s. c 195 (as amended by 1973 2nd ex.s. c 4): "This 1973 amendatory act, chapter 195, Laws of 1973, is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately: PROVIDED, That section 9 shall take effect January 1, 1975, and section 133(3) shall take effect on January 31, 1974: PROVIDED, FURTHER, That section 137 shall not be effective until July 1, 1973, at which time section 136 shall be void and of no effect: PROVIDED, FURTHER, That section 138 shall not be effective until January 1, 1974, at which time section 137 shall be void and of no effect: PROVIDED, FURTHER, That section 139 shall not be effective until July 1, 1974 at which time section 138 shall be void and of no effect, and section 139 shall be null and void and of no further effect on and after January 1, 1975: PROVIDED, FURTHER, That sections 1 through 8, sections 10 through 132, section 133(1), (2), (4), and (5), and section 134 shall not take effect until January 1, 1974, at which time sections 135, 136, and sections 140 through 151 shall be void and of no effect: PROVIDED, FURTHER, That section 152 shall be void and of no effect on and after January 1, 1975." [1973 2nd ex.s. c 4 § 3; 1973 1st ex.s. c 195 § 154.]

84.52.053 Levies by school districts authorized—When—Procedure. (1) The limitations imposed by RCW 84.52.050 through 84.52.056, and 84.52.043 shall not prevent the levy of taxes by school districts, when authorized so to do by the voters of such school district in the manner and for the purposes and number of years allowable under Article VII, section 2(a) of the Constitution of this state. Elections for such taxes shall be held in the year in which the levy is made or, in the case of propositions authorizing two-year through four-year levies for maintenance and operation support of a school district, authorizing two-year levies for transportation vehicle funds established in RCW 28A.160.130, or authorizing two-year through six-year levies to support the construction, modernization, or remodeling of school facilities, which includes the purposes of RCW 28A.320.330(2) (f) and (g), in the year in which the first annual levy is made.

(2) Once additional tax levies have been authorized for maintenance and operation support of a school district for a two-year through four-year period as provided under subsection (1) of this section, no further additional tax levies for

maintenance and operation support of the district for that period may be authorized. For the purpose of applying the limitation of this subsection, a two-year through six-year levy to support the construction, modernization, or remodeling of school facilities shall not be deemed to be a tax levy for maintenance and operation support of a school district.

(3) A special election may be called and the time therefor fixed by the board of school directors, by giving notice thereof by publication in the manner provided by law for giving notices of general elections, at which special election the proposition authorizing such excess levy shall be submitted in such form as to enable the voters favoring the proposition to vote "yes" and those opposed thereto to vote "no". [2009 c 460 § 2; 2007 c 129 § 3; 1997 c 260 § 1; 1994 c 116 § 1; 1987 1st ex.s. c 2 § 103; 1986 c 133 § 1; 1977 ex.s. c 325 § 3.]

Intent—2007 c 129: See note following RCW 28A.320.330.

Contingent effective date—1997 c 260: "This act takes effect if the proposed amendment to Article VII, section 2 of the state Constitution authorizing school levies for periods not exceeding four years is validly submitted to and is approved and ratified by the voters at the next general election. If the proposed amendment is not approved and ratified, this act is void in its entirety." [1997 c 260 § 2.] House Joint Resolution No. 4208 was approved and ratified by the voters at the November 4, 1997, general election.

Intent—Severability—Effective date—1987 1st ex.s. c 2: See notes following RCW 84.52.0531.

Contingent effective date—1986 c 133: "This act shall take effect on December 15, 1986, if the proposed amendment to Article VII, section 2 of the state Constitution to change the time periods for school levies, House Joint Resolution No. 55, is validly submitted and is approved and ratified by the voters at a general election held in November, 1986. If the proposed amendment is not so approved and ratified, this act shall be null and void in its entirety." [1986 c 133 § 3.] 1986 House Joint Resolution No. 55 was approved at the November 1986 general election. See Article VII, section 2 and Amendment 79 of the state Constitution.

Severability—Effective date—1977 ex.s. c 325: See notes following RCW 84.52.052.

School district boundary changes: RCW 84.09.037.

School funds enumerated—Deposits—Uses: RCW 28A.320.330.

84.52.0531 Levies by school districts—Maximum dollar amount for maintenance and operation support—Restrictions—Maximum levy percentage—Levy reduction funds—Rules. ***(Expires January 1, 2012.)*** The maximum dollar amount which may be levied by or for any school district for maintenance and operation support under the provisions of RCW 84.52.053 shall be determined as follows:

(1) For excess levies for collection in calendar year 1997, the maximum dollar amount shall be calculated pursuant to the laws and rules in effect in November 1996.

(2) For excess levies for collection in calendar year 1998 and thereafter, the maximum dollar amount shall be the sum of (a) plus or minus (b) and (c) of this subsection minus (d) of this subsection:

(a) The district's levy base as defined in subsections (3) and (4) of this section multiplied by the district's maximum levy percentage as defined in subsection (5) of this section;

(b) For districts in a high/nonhigh relationship, the high school district's maximum levy amount shall be reduced and the nonhigh school district's maximum levy amount shall be increased by an amount equal to the estimated amount of the nonhigh payment due to the high school district under RCW 28A.545.030(3) and 28A.545.050 for the school year commencing the year of the levy;

(c) For districts in an interdistrict cooperative agreement, the nonresident school district's maximum levy amount shall be reduced and the resident school district's maximum levy amount shall be increased by an amount equal to the per pupil basic education allocation included in the nonresident district's levy base under subsection (3) of this section multiplied by:

(i) The number of full-time equivalent students served from the resident district in the prior school year; multiplied by:

(ii) The serving district's maximum levy percentage determined under subsection (5) of this section; increased by:

(iii) The percent increase per full-time equivalent student as stated in the state basic education appropriation section of the biennial budget between the prior school year and the current school year divided by fifty-five percent;

(d) The district's maximum levy amount shall be reduced by the maximum amount of state matching funds for which the district is eligible under RCW 28A.500.010.

(3) For excess levies for collection in calendar year 2005 and thereafter, a district's levy base shall be the sum of allocations in (a) through (c) of this subsection received by the district for the prior school year and the amounts determined under subsection (4) of this section, including allocations for compensation increases, plus the sum of such allocations multiplied by the percent increase per full time equivalent student as stated in the state basic education appropriation section of the biennial budget between the prior school year and the current school year and divided by fifty-five percent. A district's levy base shall not include local school district property tax levies or other local revenues, or state and federal allocations not identified in (a) through (c) of this subsection.

(a) The district's basic education allocation as determined pursuant to RCW 28A.150.250, 28A.150.260, and 28A.150.350;

(b) State and federal categorical allocations for the following programs:

(i) Pupil transportation;

(ii) Special education;

(iii) Education of highly capable students;

(iv) Compensatory education, including but not limited to learning assistance, migrant education, Indian education, refugee programs, and bilingual education;

(v) Food services; and

(vi) Statewide block grant programs; and

(c) Any other federal allocations for elementary and secondary school programs, including direct grants, other than federal impact aid funds and allocations in lieu of taxes.

(4) For levy collections in calendar years 2005 through 2011, in addition to the allocations included under subsection (3)(a) through (c) of this section, a district's levy base shall also include the following:

(a) The difference between the allocation the district would have received in the current school year had *RCW 84.52.068 not been amended by chapter 19, Laws of 2003 1st sp. sess. and the allocation the district received in the current school year pursuant to *RCW 84.52.068. The office of the superintendent of public instruction shall offset the amount

added to a district's levy base pursuant to this subsection (4)(a) by any additional per student allocations included in a district's levy base pursuant to the enactment of an initiative to the people subsequent to June 10, 2004; and

(b) The difference between the allocations the district would have received the prior school year had RCW 28A.400.205 not been amended by chapter 20, Laws of 2003 1st sp. sess. and the allocations the district actually received the prior school year pursuant to RCW 28A.400.205. The office of the superintendent of public instruction shall offset the amount added to a district's levy base pursuant to this subsection (4)(b) by any additional salary increase allocations included in a district's levy base pursuant to the enactment of an initiative to the people subsequent to June 10, 2004.

(5) A district's maximum levy percentage shall be twenty-two percent in 1998 and twenty-four percent in 1999 and every year thereafter; plus, for qualifying districts, the grandfathered percentage determined as follows:

(a) For 1997, the difference between the district's 1993 maximum levy percentage and twenty percent; and

(b) For 1998 and thereafter, the percentage calculated as follows:

(i) Multiply the grandfathered percentage for the prior year times the district's levy base determined under subsection (3) of this section;

(ii) Reduce the result of (b)(i) of this subsection by any levy reduction funds as defined in subsection (6) of this section that are to be allocated to the district for the current school year;

(iii) Divide the result of (b)(ii) of this subsection by the district's levy base; and

(iv) Take the greater of zero or the percentage calculated in (b)(iii) of this subsection.

(6) "Levy reduction funds" shall mean increases in state funds from the prior school year for programs included under subsections (3) and (4) of this section: (a) That are not attributable to enrollment changes, compensation increases, or inflationary adjustments; and (b) that are or were specifically identified as levy reduction funds in the appropriations act. If levy reduction funds are dependent on formula factors which would not be finalized until after the start of the current school year, the superintendent of public instruction shall estimate the total amount of levy reduction funds by using prior school year data in place of current school year data. Levy reduction funds shall not include moneys received by school districts from cities or counties.

(7) For the purposes of this section, "prior school year" means the most recent school year completed prior to the year in which the levies are to be collected.

(8) For the purposes of this section, "current school year" means the year immediately following the prior school year.

(9) Funds collected from transportation vehicle fund tax levies shall not be subject to the levy limitations in this section.

(10) The superintendent of public instruction shall develop rules and regulations and inform school districts of the pertinent data necessary to carry out the provisions of this section.

(11) For calendar year 2009, the office of the superintendent of public instruction shall recalculate school district levy authority to reflect levy rates certified by school districts for calendar year 2009. [2009 c 4 § 908; 2006 c 119 § 2; 2004 c 21 § 2; 1997 c 259 § 2; 1995 1st sp.s. c 11 § 1; 1994 c 116 § 2; 1993 c 465 § 1; 1992 c 49 § 1; 1990 c 33 § 601; 1989 c 141 § 1; 1988 c 252 § 1; 1987 1st ex.s. c 2 § 101; 1987 c 185 § 40; 1985 c 374 § 1. Prior: 1981 c 264 § 10; 1981 c 168 § 1; 1979 ex.s. c 172 § 1; 1977 ex.s. c 325 § 4.]

***Reviser's note:** RCW 84.52.068 was repealed by 2009 c 479 § 75.

Effective date—2009 c 4: See note following RCW 28A.505.220.

Expiration date—2009 c 4 § 908: "Section 908 of this act expires January 1, 2012." [2009 c 4 § 909.]

Expiration date—2004 c 21: See note following RCW 28A.500.020.

Funding not related to basic education—1997 c 259: "Funding resulting from this act is for school district activities which supplement or are not related to the state's basic program of education obligation as set forth under Article IX of the state Constitution." [1997 c 259 § 1.]

Purpose—Statutory references—Severability—1990 c 33: See RCW 28A.900.100 through 28A.900.102.

Effective date—1989 c 141: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1989." [1989 c 141 § 2.]

Intent—1987 1st ex.s. c 2: "The legislature intends to establish the limitation on school district maintenance and operations levies at twenty percent, with ten percent to be equalized on a statewide basis. The legislature further intends to establish a modern school financing system for compensation of school staff and provide a class size reduction in grades kindergarten through three. The legislature intends to give the highest funding priority to strengthening support for existing school programs.

The legislature finds that providing for the adoption of a statewide salary allocation schedule for certificated instructional staff will encourage recruitment and retention of able individuals to the teaching profession, and limit the administrative burden associated with implementing state teacher salary policies." [1987 1st ex.s. c 2 § 1.]

Severability—1987 1st ex.s. c 2: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 1st ex.s. c 2 § 213.]

Effective date—1987 1st ex.s. c 2: "This act shall take effect September 1, 1987." [1987 1st ex.s. c 2 § 214.]

Intent—Severability—1987 c 185: See notes following RCW 51.12.130.

Severability—1985 c 374: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 374 § 3.]

Effective date—1981 c 264: "Section 10 of this amendatory act shall become effective for maintenance and operation excess tax levies now or hereafter authorized pursuant to RCW 84.52.053, as now or hereafter amended, for collection in 1982 and thereafter." [1981 c 264 § 11.]

Severability—1981 c 264: See note following RCW 28A.545.030.

Effective date—1979 ex.s. c 172: "This amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on September 1, 1979." [1979 ex.s. c 172 § 3.]

Severability—1979 ex.s. c 172: "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 172 § 2.]

Severability—Effective date—1977 ex.s. c 325: See notes following RCW 84.52.052.

Payments to high school districts for educating nonhigh school district students: Chapter 28A.545 RCW.

Purposes: RCW 28A.545.030.

Rules to effect purposes and implement provisions: RCW 28A.545.110.

Superintendent's annual determination of estimated amount due—Process: RCW 28A.545.070.

84.52.067 State levy for support of common schools—Disposition of funds. All property taxes levied by the state for the support of common schools shall be paid into the general fund of the state treasury as provided in RCW 84.56.280. [2009 c 479 § 73; 2001 c 3 § 7 (Initiative Measure No. 728, approved November 7, 2000); 1967 ex.s. c 133 § 2.]

Effective date—2009 c 479: See note following RCW 2.56.030.

Short title—Purpose—Intent—Construction—Severability—Effective dates—2001 c 3 (Initiative Measure No. 728): See notes following RCW 28A.505.210.

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

84.52.140 Additional regular property tax levy authorized. (1) A county with a population of one million five hundred thousand or more may impose an additional regular property tax levy in an amount not to exceed seven and one-half cents per thousand dollars of the assessed value of property in the county in accordance with the terms of this section.

(2) Any tax imposed under this section shall be used as follows:

(a) The first one cent for expanding transit capacity along state route number 520 by adding core and other supporting bus routes;

(b) The remainder for transit-related expenditures.

(3) The limitations in RCW 84.52.043 do not apply to the tax authorized in this section.

(4) The limitation in RCW 84.55.010 does not apply to the first tax levy imposed under this section. [2009 c 551 § 5.]

Chapter 84.55 RCW
LIMITATIONS UPON REGULAR PROPERTY TAXES

Sections

84.55.050 Election to authorize increase in regular property tax levy—Limited propositions—Procedure.
84.55.070 Inapplicability of chapter to levies for certain purposes.

84.55.050 Election to authorize increase in regular property tax levy—Limited propositions—Procedure. (1) Subject to any otherwise applicable statutory dollar rate limitations, regular property taxes may be levied by or for a taxing district in an amount exceeding the limitations provided for in this chapter if such levy is authorized by a proposition approved by a majority of the voters of the taxing district voting on the proposition at a general election held within the district or at a special election within the taxing district called by the district for the purpose of submitting such proposition to the voters. Any election held pursuant to this section shall be held not more than twelve months prior to the date on which the proposed levy is to be made, except as provided in subsection (2) of this section. The ballot of the proposition shall state the dollar rate proposed and shall clearly state the conditions, if any, which are applicable under subsection (4) of this section.

(2)(a) Subject to statutory dollar limitations, a proposition placed before the voters under this section may authorize annual increases in levies for multiple consecutive years, up to six consecutive years, during which period each year's authorized maximum legal levy shall be used as the base upon which an increased levy limit for the succeeding year is computed, but the ballot proposition must state the dollar rate proposed only for the first year of the consecutive years and must state the limit factor, or a specified index to be used for determining a limit factor, such as the consumer price index, which need not be the same for all years, by which the regular tax levy for the district may be increased in each of the subsequent consecutive years. Elections for this purpose must be held at a primary or general election. The title of each ballot measure must state the limited purposes for which the proposed annual increases during the specified period of up to six consecutive years shall be used.

(b)(i) Except as otherwise provided in this subsection (2)(b), funds raised by a levy under this subsection may not supplant existing funds used for the limited purpose specified in the ballot title. For purposes of this subsection, existing funds means the actual operating expenditures for the calendar year in which the ballot measure is approved by voters. Actual operating expenditures excludes lost federal funds, lost or expired state grants or loans, extraordinary events not likely to reoccur, changes in contract provisions beyond the control of the taxing district receiving the services, and major nonrecurring capital expenditures.

(ii) The supplanting limitations in (b)(i) of this subsection do not apply to levies approved by the voters in calendar years 2009, 2010, and 2011, in any county with a population of one million five hundred thousand or more. This subsection (2)(b)(ii) only applies to levies approved by the voters after July 26, 2009.

(iii) The supplanting limitations in (b)(i) of this subsection do not apply to levies approved by the voters in calendar year 2009 and thereafter in any county with a population less than one million five hundred thousand. This subsection (2)(b)(iii) only applies to levies approved by the voters after July 26, 2009.

(3) After a levy authorized pursuant to this section is made, the dollar amount of such levy may not be used for the purpose of computing the limitations for subsequent levies provided for in this chapter, unless the ballot proposition expressly states that the levy made under this section will be used for this purpose.

(4) If expressly stated, a proposition placed before the voters under subsection (1) or (2) of this section may:

(a) Use the dollar amount of a levy under subsection (1) of this section, or the dollar amount of the final levy under subsection (2) of this section, for the purpose of computing the limitations for subsequent levies provided for in this chapter;

(b) Limit the period for which the increased levy is to be made under (a) of this subsection;

(c) Limit the purpose for which the increased levy is to be made under (a) of this subsection, but if the limited purpose includes making redemption payments on bonds, the period for which the increased levies are made shall not exceed nine years;

(d) Set the levy or levies at a rate less than the maximum rate allowed for the district; or

(e) Include any combination of the conditions in this subsection.

(5) Except as otherwise expressly stated in an approved ballot measure under this section, subsequent levies shall be computed as if:

(a) The proposition under this section had not been approved; and

(b) The taxing district had made levies at the maximum rates which would otherwise have been allowed under this chapter during the years levies were made under the proposition. [2009 c 551 § 3; 2008 c 319 § 1; 2007 c 380 § 2; 2003 1st sp.s. c 24 § 4; 1989 c 287 § 1; 1986 c 169 § 1; 1979 ex.s. c 218 § 3; 1973 1st ex.s. c 195 § 109; 1971 ex.s. c 288 § 24.]

Application—2008 c 319: "This act applies prospectively only to levy lid lift ballot propositions under RCW 84.55.050 that receive voter approval on or after April 1, 2008." [2008 c 319 § 2.]

Effective date—2008 c 319: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 1, 2008]." [2008 c 319 § 3.]

Finding—Intent—Effective date—Severability—2003 1st sp.s. c 24: See notes following RCW 82.14.450.

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

Savings—Severability—1971 ex.s. c 288: See notes following RCW 84.40.030.

84.55.070 Inapplicability of chapter to levies for certain purposes. The provisions of this chapter do not apply to a levy, including the state levy, or that portion of a levy, made by or for a taxing district:

(1) For the purpose of funding a property tax refund paid under the provisions of chapter 84.68 RCW;

(2) Under RCW 84.69.180; or

(3) Attributable to amounts of state taxes withheld under RCW 84.56.290 or the provisions of chapter 84.69 RCW, or otherwise attributable to state taxes lawfully owing by reason of adjustments made under RCW 84.48.080. [2009 c 350 § 11; 1982 1st ex.s. c 28 § 2; 1981 c 228 § 3.]

Application—2009 c 350 §§ 10 and 11: See note following RCW 84.69.180.

Severability—1982 1st ex.s. c 28: See note following RCW 84.48.080.

Chapter 84.56 RCW
COLLECTION OF TAXES

Sections

84.56.070 Personal property—Distraint and sale, notice, property incapable of manual delivery, property about to be removed or disposed of.

84.56.070 Personal property—Distraint and sale, notice, property incapable of manual delivery, property about to be removed or disposed of. The county treasurer shall proceed to collect all personal property taxes after first completing the tax roll for the current year's collection. The treasurer shall give notice by mail to all persons charged with personal property taxes, and if such taxes are not paid before they become delinquent, the treasurer shall forthwith proceed to collect the same. In the event that he or she is unable to collect the same when due, the treasurer shall prepare papers in distraint, which shall contain a description of the personal property, the amount of taxes, the amount of the accrued interest at the rate provided by law from the date of delinquency, and the name of the owner or reputed owner. The treasurer shall without demand or notice distrain sufficient goods and chattels belonging to the person charged with such taxes to pay the same, with interest at the rate provided by law from the date of delinquency, together with all accruing costs, and shall proceed to advertise the same by posting written notices in three public places in the county in which such property has been distrained, one of which places shall be at the county court house, such notice to state the time when and place where such property will be sold. The county treasurer, or the treasurer's deputy, shall tax the same fees for making the distraint and sale of goods and chattels for the payment of taxes as are allowed by law to sheriffs for making levy and sale of property on execution; traveling fees to be computed from the county seat of the county to the place of making distraint. If the taxes for which such property is distrained, and the interest and costs accruing thereon, are not paid before the date appointed for such sale, which shall be not less than ten days after the taking of such property, such treasurer or treasurer's designee shall proceed to sell such property at public auction, or so much thereof as shall be sufficient to pay such taxes, with interest and costs, and if there be any excess of money arising from the sale of any personal property, the treasurer shall pay such excess less any cost of the auction to the owner of the property so sold or to his or her legal representative: PROVIDED, That whenever it shall become necessary to distrain any standing timber owned separately from the ownership of the land upon which the same may stand, or any fish trap, pound net, reef net, set net or drag seine fishing location, or any other personal property as the treasurer shall determine to be incapable or reasonably impracticable of manual delivery, it shall be deemed to have been distrained and taken into possession when the treasurer shall have, at least thirty days before the date fixed for the sale thereof, filed with the auditor of the county wherein such property is located a notice in writing reciting that the treasurer has distrained such property, describing it, giving the name of the owner or reputed owner, the amount of the tax due, with interest, and the time and place of sale; a copy of the notice shall also be sent to the owner or reputed owner at his last known address, by registered letter at least thirty days prior to the date of sale: AND PROVIDED FURTHER, That if the county treasurer has reasonable grounds to believe that any personal property, including mobile homes, manufactured homes, or park model trailers, upon which taxes have been levied, but not paid, is about to be removed from the county where the same has been assessed, or is about to be destroyed, sold or disposed of, the county treasurer may demand such taxes, without the notice provided for in this section, and if necessary may forthwith distrain sufficient goods and chattels to pay the same. [2009 c 350 § 2; 2007 c 295 § 5; 1991 c 245 § 19; (1975-'76 2nd ex.s. c 10 § 2 expired December 31, 1976); 1961 c 15 § 84.56.070. Prior: 1949 c 21 § 2; 1935 c 30 § 4; 1933 c 33 § 1; 1925 ex.s. c 130 § 86; Rem. Supp. 1949 § 11247; prior: 1915 c 137 § 1; 1911 c 24 § 2; 1899 c 141 § 7; 1897 c 71 § 71; 1895 c 176 § 15; 1893 c 124 § 72; 1890 p 561 § 87; Code 1881 § 2903. Formerly RCW 84.56.070, 84.56.080, and 84.56.100.]

Issuance of warrant: RCW 84.56.075.

Chapter 84.60 RCW
LIEN OF TAXES

Sections

84.60.050 Acquisition by governmental unit of property subject to tax lien or placement under agreement or order of immediate possession or use—Effect.

84.60.050 Acquisition by governmental unit of property subject to tax lien or placement under agreement or order of immediate possession or use—Effect. (1) When real property is acquired by purchase or condemnation by the state of Washington, any county or municipal corporation or is placed under a recorded agreement for immediate possession and use or an order of immediate possession and use pursuant to RCW 8.04.090, such property shall continue to be subject to the tax lien for the years prior to the year in which the property is so acquired or placed under such agreement or order, of any tax levied by the state, county, municipal corporation or other tax levying public body, except as is otherwise provided in RCW 84.60.070.

(2) The lien for taxes applicable to the real property being acquired or placed under immediate possession and use for the year in which such real property is so acquired or placed under immediate possession and use shall be for only the pro rata portion of taxes allocable to that portion of the year prior to the date of execution of the instrument vesting title, date of recording such agreement of immediate possession and use, date of such order of immediate possession and use, or date of judgment. No taxes levied or tax lien on such property allocable to a period subsequent to the dates identified in this subsection shall be valid and any such taxes levied shall be canceled as provided in RCW 84.48.065. In the event the owner has paid taxes allocable to that portion of the year subsequent to the dates identified in this subsection he or she shall be entitled to a pro rata refund of the amount paid on the property so acquired or placed under a recorded agreement or an order of immediate possession and use. If the dates identified in this subsection precede the completion of the property tax rolls for the current year's collection in the year in which such taxes become payable, no lien for such taxes shall be valid and any such taxes levied but not payable shall be canceled as provided in RCW 84.48.065. [2009 c 350 § 4; 1994 c 301 § 54; 1994 c 124 § 39; 1971 ex.s. c 260 § 2; 1967 ex.s. c 145 § 36; 1961 c 15 § 84.60.050. Prior: 1957 c 277 § 1.]

Severability—1967 ex.s. c 145: See RCW 47.98.043.

Exemption of property under order of immediate possession and use: RCW 84.36.010.

Chapter 84.69 RCW
REFUNDS

Sections

84.69.030 Procedure to obtain order for refund.
84.69.180 Property tax authority for funding refunds and abatements.

84.69.030 Procedure to obtain order for refund. No orders for a refund under this chapter shall be made except on a claim:

(1) Verified by the person who paid the tax, the person's guardian, executor or administrator; and

(2) Filed with the county treasurer within three years after the due date of the payment sought to be refunded; and

(3) Stating the statutory ground upon which the refund is claimed. [2009 c 350 § 9; 1991 c 245 § 32; 1989 c 378 § 32; 1961 c 15 § 84.69.030. Prior: 1957 c 120 § 3.]

84.69.180 Property tax authority for funding refunds and abatements. Taxing districts other than the state may levy a tax upon all the taxable property within the district for the purpose of:

(1) Funding refunds paid or to be paid under this chapter, except for refunds under RCW 84.69.020(1), including interest, as ordered by the county treasurer or county legislative authority within the preceding twelve months; and

(2) Reimbursing the taxing district for taxes abated under RCW 84.70.010 within the preceding twelve months. This subsection (2) only applies to abatements that do not require a refund under this chapter. Abatements that require a refund are included within the scope of subsection (1) of this section. [2009 c 350 § 10.]

Application—2009 c 350 §§ 10 and 11: "Sections 10 and 11 of this act apply retroactively to January 1, 2009, and apply to taxes levied under section 10 of this act for collection in 2010 and thereafter." [2009 c 350 § 12.]

Title 85
DIKING AND DRAINAGE

Chapters

85.08 Diking, drainage, and sewerage improvement districts.
85.38 Special district creation and operation.

Chapter 85.08 RCW
DIKING, DRAINAGE, AND SEWERAGE IMPROVEMENT DISTRICTS

Sections

85.08.310 Construction of improvements—Contracts with United States.
85.08.480 Collection of assessments—Certificates of delinquency—Foreclosure.

85.08.310 Construction of improvements—Contracts with United States. The said board of supervisors shall, immediately upon their election and qualification, begin the construction of such system of improvement and shall proceed with the construction thereof in accordance with the plans adopted therefor. In the construction of any system of drainage, construction shall be begun at the outlet or outlets thereof and at such other points as may be deemed advisable from time to time. In the construction of any system of improvement the board of supervisors with the approval of the board of county commissioners may modify, curtail, enlarge or add to the original plans wherever the same may be found necessary or advisable in the course of actual construction. But such changes shall not in the aggregate increase the estimated cost of the entire system by more than one-fifth, and all additional or different rights-of-way required shall be obtained as hereinbefore prescribed. The

board of county commissioners may in its discretion let the construction of said system or any portion thereof by contract, in the manner provided for letting contracts for the construction of county roads and bridges. The board of county commissioners may, upon such terms as may be agreed upon by the United States acting in pursuance of the National Reclamation Act approved June 17, 1902 (32 Statutes at Large 388), and the acts amendatory thereof and supplemental thereto, or in pursuance to any other act of congress appropriate to the purpose, contract for the construction of the system of improvement or any part thereof, by the United States, or in cooperation with the United States therein. In such case, no bond shall be required, and the work shall be done under the supervision and control of the proper officers of the United States.

Unless the work of construction is let by contract as hereinbefore provided, or for such part of such work as is not covered by contract, the board of supervisors shall employ such number of persons as shall be necessary to successfully carry on the work of such construction, and shall give preference in such employment to persons owning land to be benefited by the improvement.

The provisions of this section shall not be construed as denying to the supervisors, in case the construction work is left in their hands, the power to enter into an agreement with any contractor to furnish labor, material, equipment and skilled supervision, the contractor to be compensated upon the basis of a specific sum, or upon a percentage of the cost of the work, the services of the contractor to cover the use of equipment and the value of skilled supervision: PROVIDED, HOWEVER, That there is retained in the said board by the contract the right of termination thereof at any time, on reasonable notice, and fixing in the said contract, or reserving in said board, the right to fix the rates of wages to be paid to the persons employed in said work. The board of supervisors may also let contracts in such manner and on such notice as they deem advisable for items of construction not exceeding one thousand dollars in amount of expenditures. [2009 c 549 § 1035; 1921 c 157 § 5; 1917 c 130 § 27; 1913 c 176 § 22; RRS § 4427.]

85.08.480 Collection of assessments—Certificates of delinquency—Foreclosure. The respective installments of assessments for construction or maintenance of improvements made under the provisions of this chapter, shall be collected in the same manner and shall become delinquent at the same time as general taxes, certificates of delinquency shall be issued, and the lien of the assessment shall be enforced by foreclosure and sale of the property assessed, as in the case of general taxes, all according to the laws in force on January 1, 1923, except as hereinafter specifically provided.

The annual assessments or installments of assessments, both for construction and for maintenance and repairs of the diking and/or drainage system shall become due in two equal installments, one-half being payable on or before April 30th, and the other half on or before October 31st; and delinquency interest thereon shall run from said dates on said respective halves of said assessments.

The rate of interest thereon after delinquency, also the rate of interest borne by certificates of delinquency, shall be twelve percent per annum. Certificates of delinquency for any assessment or installment thereof shall be issued upon demand and payment of such delinquent assessment and the fee for the same at any time after the expiration of twelve months after the date of delinquency thereof. In case no certificate of delinquency be issued after the expiration of four years from date of delinquency of assessments for construction costs, or after the expiration of two years from date of delinquency of assessments for maintenance or repairs, certificates of delinquency shall be issued to the county, and foreclosure thereof shall forthwith be effected in the manner provided in chapter 84.64 RCW.

The holder of a certificate of delinquency for any drainage, diking or sewerage improvement district or consolidated district assessment or installment thereof may pay any delinquent general taxes upon the property described therein, and may redeem any certificate of delinquency for general taxes against said property and the amount so paid together with interest thereon at the rate provided by law shall be included in the lien of said certificate of delinquency.

The expense of foreclosure proceedings by the county shall be paid by the districts whose liens are foreclosed: Costs of foreclosure by the county or private persons as provided by law, shall be included in the judgment of foreclosure. [2009 c 350 § 7; 1933 c 125 § 2; 1923 c 46 § 11, part; 1917 c 130 § 33; 1913 c 176 § 31; RRS § 4439-2.]

Chapter 85.38 RCW
SPECIAL DISTRICT CREATION AND OPERATION

Sections

85.38.105 Voting rights.
85.38.127 Elections—Special flood control districts—Qualified voters.
85.38.901 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. *(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*

85.38.105 Voting rights. (1) The owner of land located in a special district who is a qualified voter of the special district shall receive two votes at any election. This section does not apply to special flood control districts consisting of three or more counties.

(2) If multiple undivided interests, other than community property interests, exist in a lot or parcel and no person owns a majority undivided interest, the owners of undivided interests at least equal to a majority interest may designate in writing:

(a) Which owner is eligible to vote and may cast two votes; or

(b) Which two owners are eligible to vote and may cast one vote each.

(3) If land is owned as community property, each spouse is entitled to one vote if both spouses otherwise qualify to vote, unless one spouse designates in writing that the other spouse may cast both votes.

(4) A corporation, partnership, or governmental entity shall designate:

(a) A natural person to cast its two votes; or

(b) Two natural persons to each cast one of its votes.

(5) Except as provided in RCW 85.08.025 and 86.09.377, no owner of land may cast more than two votes or

have more than two votes cast for him or her in a special district election. [2009 c 144 § 1; 1991 c 349 § 2.]

85.38.127 Elections—Special flood control districts—Qualified voters. All registered voters within a special flood control district consisting of three or more counties are qualified voters in special flood control district elections. [2009 c 144 § 2.]

85.38.901 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. ***(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 196.]

Title 86

FLOOD CONTROL

Chapters

86.09 Flood control districts—1937 act.
86.26 State participation in flood control maintenance.

Chapter 86.09 RCW

FLOOD CONTROL DISTRICTS—1937 ACT

Sections

86.09.490 Assessment lien—Priority.

86.09.490 Assessment lien—Priority. The assessment upon real property shall be a lien against the property assessed, from and after the first day of January in the year in which the assessment becomes due and payable, but as between grantor and grantee such lien shall not attach until the county treasurer has completed the property tax roll for the current year's collection and provided the notification required by RCW 84.56.020. The lien shall be paramount and superior to any other lien theretofore or thereafter created, whether by mortgage or otherwise, except a lien for undelinquent flood control district assessments, diking or drainage, or diking or drainage improvement, district assessments and for unpaid and outstanding general ad valorem taxes, and such lien shall not be removed until the assessments are paid or the property sold for the payment thereof as provided by law. [2009 c 350 § 3; 1937 c 72 § 164; RRS § 9663E-164. Formerly RCW 86.08.560, part.]

Chapter 86.26 RCW

STATE PARTICIPATION IN FLOOD CONTROL MAINTENANCE

Sections

86.26.007 Flood control assistance account—Use.

86.26.007 Flood control assistance account—Use. The flood control assistance account is hereby established in the state treasury. At the beginning of the 2005-2007 fiscal biennium, the state treasurer shall transfer three million dollars from the general fund to the flood control assistance account. Each biennium thereafter the state treasurer shall transfer four million dollars from the general fund to the flood control assistance account, except that during the 2009-2011 fiscal biennium, the state treasurer shall transfer two million dollars from the general fund to the flood control assistance account. Moneys in the flood control assistance account may be spent only after appropriation for purposes specified under this chapter. [2009 c 564 § 961; 2005 c 518 § 947; 2003 1st sp.s. c 25 § 943; 1997 c 149 § 914; 1996 c 283 § 903; 1995 2nd sp.s. c 18 § 915; 1993 sp.s. c 24 § 928; 1991 sp.s. c 13 § 24; 1986 c 46 § 1; 1985 c 57 § 88; 1984 c 212 § 1.]

Effective date—2009 c 564: See note following RCW 2.68.020.

Severability—Effective date—2005 c 518: See notes following RCW 28A.500.030.

Severability—Effective date—2003 1st sp.s. c 25: See notes following RCW 19.28.351.

Severability—Effective date—1997 c 149: See notes following RCW 43.08.250.

Severability—Effective date—1996 c 283: See notes following RCW 43.08.250.

Severability—Effective date—1995 2nd sp.s. c 18: See notes following RCW 19.118.110.

Severability—Effective dates—1993 sp.s. c 24: See notes following RCW 28A.310.020.

Effective dates—Severability—1991 sp.s. c 13: See notes following RCW 18.08.240.

Effective date—1985 c 57: See note following RCW 18.04.105.

Title 87

IRRIGATION

Chapters

87.03 Irrigation districts generally.

Chapter 87.03 RCW

IRRIGATION DISTRICTS GENERALLY

Sections

87.03.0155 Contract and formation powers.
87.03.265 Lien of assessment.
87.03.270 Assessments, when delinquent—Assessment book, purpose—Statement of assessments due—Collection—Additional fee for delinquency.
87.03.437 Competitive bids—Use of purchase contract process in RCW 39.04.190.
87.03.460 Compensation and expenses of directors, officers, employees.
87.03.920 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. *(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*

87.03.0155 Contract and formation powers. (1) An irrigation district may enter into any contract or agreement with, or form a separate legal entity with, one or more of the entities or utilities specified in subsection (3) of this section for any of the following purposes:

(a) Purchasing and selling electric power; and

(b) Developing or owning, or both, electric power generating or transmitting facilities, or both, including, but not limited to, facilities for generating or transmitting electric power generated by wind.

(2) The contract or agreement may provide:

(a) For purchasing the capability of a project to produce or transmit electric power, in addition to actual output of a project;

(b) For making payments whether or not a project is completed, operative, or operating, and notwithstanding the suspension, interruption, interference, reduction, or curtailment of output or use of a project or the use, power, and energy contracted for or agreed to;

(c) That payments are not subject to reduction, whether by offset or otherwise; and

(d) That performance is not conditioned upon performance or nonperformance of any party or entity.

(3) Pursuant to authority granted under this section, irrigation districts may contract or enter into agreements with one or more:

(a) Agencies of the United States government;

(b) States;

(c) Municipalities;

(d) Public utility districts;

(e) Irrigation districts;

(f) Joint operating agencies;

(g) Rural electric cooperatives;

(h) Mutual corporations or associations;

(i) Investor-owned utilities; or

(j) Associations or legal entities composed of any such entities or utilities. [2009 c 145 § 4.]

87.03.265 Lien of assessment. The assessment upon real property shall be a lien against the property assessed, from and after the first day of January in the year in which it is levied, but as between grantor and grantee such lien shall not attach until the county treasurer has completed the property tax roll for the current year's collection and provided the notification required by RCW 84.56.020 in the year in which the assessment is payable, which lien shall be paramount and superior to any other lien theretofore or thereafter created, whether by mortgage or otherwise, except for a lien for prior assessments, and such lien shall not be removed until the assessments are paid or the property sold for the payment thereof as provided by law. And the lien for the bonds of any issue shall be a preferred lien to that of any subsequent issue. Also the lien for all payments due or to become due under any contract with the United States, or the state of Washington, accompanying which bonds of the district have not been deposited with the United States or the state of Washington, as in RCW 87.03.140 provided, shall be a preferred lien to any issue of bonds subsequent to the date of such contract. [2009 c 350 § 5; 1939 c 171 § 2; 1921 c 129 § 15; 1915 c 179 § 13; 1913 c 165 § 11; 1889-90 p 684 § 23; RRS § 7441. Formerly RCW 87.32.100.]

Acquisition, construction and operating funds—Tolls and assessments, alternative methods of—Liens, foreclosure of—Delinquencies by tenants: RCW 87.03.445.

Delinquent assessments: Chapter 87.06 RCW.

87.03.270 Assessments, when delinquent—Assessment book, purpose—Statement of assessments due—Collection—Additional fee for delinquency. The assessment roll, before its equalization and adoption, shall be checked and compared as to descriptions and ownerships, with the county treasurer's land rolls. On or before the fifteenth day of January in each year the secretary must deliver the assessment roll or the respective segregation thereof to the county treasurer of each respective county in which the lands therein described are located, and said assessments shall become due and payable after the county treasurer has completed the property tax roll for the current year's collection and provided the notification required by RCW 84.56.020.

All assessments on said roll shall become delinquent on the first day of May following the filing of the roll unless the assessments are paid on or before the thirtieth day of April of said year: PROVIDED, That if an assessment is ten dollars or more for said year and if one-half of the assessment is paid on or before the thirtieth day of April, the remainder shall be due and payable on or before the thirty-first day of October following and shall be delinquent after that date. All delinquent assessments shall bear interest at the rate of twelve percent per annum, computed on a monthly basis and without compounding, from the date of delinquency until paid.

Upon receiving the assessment roll the county treasurer shall prepare therefrom an assessment book in which shall be written the description of the land as it appears in the assessment roll, the name of the owner or owners where known, and if assessed to the unknown owners, then the word "unknown", and the total assessment levied against each tract of land. Proper space shall be left in said book for the entry therein of all subsequent proceedings relating to the payment and collection of said assessments.

On or before April 1st of each year, the treasurer of the district shall send a statement of assessments due. County treasurers who collect irrigation district assessments may send the statement of irrigation district assessments together with the statement of general taxes.

Upon payment of any assessment the county treasurer must enter the date of said payment in said assessment book opposite the description of the land and the name of the person paying and give a receipt to such person specifying the amount of the assessment and the amount paid with the description of the property assessed.

It shall be the duty of the treasurer of the district to furnish upon request of the owner, or any person interested, a statement showing any and all assessments levied as shown by the assessment roll in his office upon land described in such request. All statements of irrigation district assessments covering any land in the district shall show the amount of the irrigation district assessment, the dates on which the assessment is due, the place of payment, and, if the property was sold for delinquent assessments in a prior year, the amount of the delinquent assessment and the notation "certificate issued": PROVIDED, That the failure of the treasurer to ren-

der any statement herein required of him shall not render invalid any assessments made by any irrigation district.

It shall be the duty of the county treasurer of any county, other than the county in which the office of the board of directors is located, to make monthly remittances to the county treasurer of the county in which the office of the board of directors is located covering all amounts collected by him for the irrigation district during the preceding month.

When the treasurer collects a delinquent assessment, the treasurer shall collect any other amounts due by reason of the delinquency, including accrued costs, which shall be deposited to the treasurer's operation and maintenance fund. [2009 c 350 § 6; 1988 c 134 § 13; 1982 c 102 § 1; 1981 c 209 § 1; 1967 c 169 § 2; 1939 c 171 § 3; 1933 c 43 § 4; 1931 c 60 § 2; 1929 c 181 § 1; 1921 c 129 § 16; 1919 c 180 § 12; 1917 c 162 § 5; 1915 c 179 § 14; 1913 c 165 § 12; 1913 c 13 § 2; 1895 c 165 § 12; 1889-90 p 684 § 24; RRS § 7442. Formerly RCW 87.32.050.]

Effective date—1982 c 102: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect April 15, 1982." [1982 c 102 § 3.]

Effective date—1981 c 209: See note following RCW 87.03.215.

Assessments
districts under contract with United States: Chapter 87.68 RCW.
how and when made—Assessment roll: RCW 87.03.240.

Equalization of assessments: RCW 87.03.255.

Evidence of assessment, what is: RCW 87.03.420.

87.03.437 Competitive bids—Use of purchase contract process in RCW 39.04.190. (1) Purchases of any materials, supplies, or equipment by the district shall be based on competitive bids except as provided in RCW 87.03.435 and 39.04.280. A formal sealed bid procedure shall be used as standard procedure for the purchases made by irrigation districts. However, the board may by resolution adopt a policy to waive formal sealed bidding procedures for purchases of any materials, supplies, or equipment for an amount set by the board not to exceed forty thousand dollars for each purchase.

(2) The directors may by resolution adopt a policy to use the process provided in RCW 39.04.190 for purchases of materials, supplies, or equipment when the estimated cost is between the amount established by the board under subsection (1) of this section and a maximum amount set by resolution adopted by the board for purchases up to fifty thousand dollars exclusive of sales tax. [2009 c 229 § 13; 1999 c 234 § 2.]

87.03.460 Compensation and expenses of directors, officers, employees. (1) In addition to their reasonable expenses in accordance with chapter 42.24 RCW, the directors shall each receive ninety dollars for each day or portion thereof spent by a director for such actual attendance at official meetings of the district, or in performance of other official services or duties on behalf of the district. The total amount of such additional compensation received by a director may not exceed eight thousand six hundred forty dollars in a calendar year. The board shall fix the compensation of the secretary and all other employees.

(2) Any director may waive all or any portion of his or her compensation payable under this section as to any month or months during his or her term of office, by a written waiver filed with the secretary as provided in this section. The waiver, to be effective, must be filed any time after the director's election and prior to the date on which the compensation would otherwise be paid. The waiver shall specify the month or period of months for which it is made.

(3) The dollar thresholds established in this section must be adjusted for inflation by the office of financial management every five years, beginning July 1, 2008, based upon changes in the consumer price index during that time period. "Consumer price index" means, for any calendar year, that year's annual average consumer price index, for Washington state, for wage earners and clerical workers, all items, compiled by the bureau of labor and statistics, United States department of labor. If the bureau of labor and statistics develops more than one consumer price index for areas within the state, the index covering the greatest number of people, covering areas exclusively within the boundaries of the state, and including all items shall be used for the adjustments for inflation in this section. The office of financial management must calculate the new dollar threshold and transmit it to the office of the code reviser for publication in the Washington State Register at least one month before the new dollar threshold is to take effect.

(4) A person holding office as commissioner for two or more special purpose districts shall receive only that per diem compensation authorized for one of his or her commissioner positions as compensation for attending an official meeting or conducting official services or duties while representing more than one of his or her districts. However, such commissioner may receive additional per diem compensation if approved by resolution of all boards of the affected commissions. [2009 c 145 § 2; 2007 c 469 § 13; 1998 c 121 § 14; 1990 c 38 § 1; 1984 c 168 § 4; 1980 c 23 § 1; 1979 c 83 § 3; 1975 1st ex.s. c 163 § 2; 1965 c 16 § 1; 1951 c 189 § 1; 1919 c 180 § 14; 1917 c 162 § 8; 1895 c 165 § 23; 1889-90 p 692 § 39; RRS § 7456. Formerly RCW 87.08.100.]

87.03.920 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. ***(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 197.]

Title 88

NAVIGATION AND HARBOR IMPROVEMENTS

Chapters

88.16 Pilotage act.
88.46 Vessel oil spill prevention and response.

Chapter 88.16 RCW
PILOTAGE ACT

Sections

88.16.035 Board of pilotage commissioners—Powers and duties.
88.16.090 Pilot and pilot trainee licenses—Qualifications—Duration—Annual fee—Examinations and evaluations—Training program and license—Penalty—Reporting requirements.

88.16.035 Board of pilotage commissioners—Powers and duties. (1) The board of pilotage commissioners shall:

(a) Adopt rules, pursuant to chapter 34.05 RCW, necessary for the enforcement and administration of this chapter;

(b)(i) Issue training licenses and pilot licenses to pilot applicants meeting the qualifications provided for in RCW 88.16.090 and such additional qualifications as may be determined by the board;

(ii) Establish a comprehensive training program to assist in the training and evaluation of pilot applicants before final licensing; and

(iii) Establish additional training requirements, including a program of continuing education developed after consultation with pilot organizations, including those located within the state of Washington, as required to maintain a competent pilotage service;

(c) Maintain a register of pilots, records of pilot accidents, and other history pertinent to pilotage;

(d) Determine from time to time the number of pilots necessary to be licensed in each district of the state to optimize the operation of a safe, fully regulated, efficient, and competent pilotage service in each district;

(e) Annually fix the pilotage tariffs for pilotage services provided under this chapter: PROVIDED, That the board may fix extra compensation for extra services to vessels in distress, for awaiting vessels, for all vessels in direct transit to or from a Canadian port where Puget Sound pilotage is required for a portion of the voyage, or for being carried to sea on vessels against the will of the pilot, and for such other services as may be determined by the board: PROVIDED FURTHER, That as an element of the Puget Sound pilotage district tariff, the board may consider pilot retirement plan expenses incurred in the prior year in either pilotage district. However, under no circumstances shall the state be obligated to fund or pay for any portion of retirement payments for pilots or retired pilots;

(f) File annually with the governor and the chairs of the transportation committees of the senate and house of representatives a report which includes, but is not limited to, the following: The number, names, ages, pilot license number, training license number, and years of service as a Washington licensed pilot of any person licensed by the board as a Washington state pilot or trainee; the names, employment, and other information of the members of the board; the total number of pilotage assignments by pilotage district, including information concerning the various types and sizes of vessels and the total annual tonnage; the annual earnings or stipends of individual pilots and trainees before and after deduction for expenses of pilot organizations, including extra compensation as a separate category; the annual expenses of private pilot associations, including personnel employed and capital expenditures; the status of pilotage tariffs, extra compensation, and travel; the retirement contributions paid to pilots and the disposition thereof; the number of groundings, marine occurrences, or other incidents which are reported to or investigated by the board, and which are determined to be accidents, as defined by the board, including the vessel name, location of incident, pilot's or trainee's name, and disposition of the case together with information received before the board acted from all persons concerned, including the United States coast guard; the names, qualifications, time scheduled for examinations, and the district of persons desiring to apply for Washington state pilotage licenses; summaries of dispatch records, quarterly reports from pilots, and the bylaws and operating rules of pilotage organizations; the names, sizes in deadweight tons, surcharges, if any, port of call, name of the pilot or trainee, and names and horsepower of tug boats for any and all oil tankers subject to the provisions of RCW 88.16.190 together with the names of any and all vessels for which the United States coast guard requires special handling pursuant to their authority under the Ports and Waterways Safety Act of 1972; the expenses of the board; and any and all other information which the board deems appropriate to include;

(g) Make available information that includes the pilotage act and other statutes of Washington state and the federal government that affect pilotage, including the rules of the board, together with such additional information as may be informative for pilots, agents, owners, operators, and masters;

(h) Appoint advisory committees and employ marine experts as necessary to carry out its duties under this chapter;

(i) Provide for the maintenance of efficient and competent pilotage service on all waters covered by this chapter; and do such other things as are reasonable, necessary, and expedient to insure proper and safe pilotage upon the waters covered by this chapter and facilitate the efficient administration of this chapter.

(2) The board may pay stipends to pilot trainees under subsection (1)(b) of this section. [2009 c 496 § 1; 2008 c 128 § 2; 2006 c 53 § 1; 2005 c 26 § 1; 1987 c 264 § 1; 1977 ex.s. c 337 § 4.]

Retroactive application—2006 c 53: "This act is intended to clarify the authority of the board of pilotage commissioners to pay stipends to pilot trainees that have indicated they wish to receive a stipend during the board of pilotage commissioners' training program. Section 1 of this act is remedial and curative in nature and applies retroactively to December 1, 2005. Specifically, the board may pay stipends, pursuant to the rules established by the board, to any pilot trainees that qualified for the stipends on, or after, December 1, 2005." [2006 c 53 § 3.]

Effective date—2006 c 53: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 14, 2006]." [2006 c 53 § 4.]

Effective date—2005 c 26: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state gov-

ernment and its existing public institutions, and takes effect immediately [April 12, 2005]." [2005 c 26 § 4.]

Severability—1977 ex.s. c 337: See note following RCW 88.16.005.

88.16.090 Pilot and pilot trainee licenses—Qualifications—Duration—Annual fee—Examinations and evaluations—Training program and license—Penalty—Reporting requirements. (1) A person may pilot any vessel subject to this chapter on waters covered by this chapter only if licensed to pilot such vessels on such waters under this chapter.

(2)(a) A person is eligible to be licensed as a pilot or a pilot trainee if the person:

(i) Is a citizen of the United States;

(ii) Is over the age of twenty-five years and under the age of seventy years;

(iii)(A) Holds at the time of application, as a minimum, a United States government license as master of steam or motor vessels of not more than one thousand six hundred gross register tons (three thousand international tonnage convention tons) upon oceans, near coastal waters, or inland waters; or the then most equivalent federal license as determined by the board; any such license to have been held by the applicant for a period of at least two years before application;

(B) Holds at the time of licensure as a pilot, after successful completion of the board-required training program, a first class United States endorsement without restrictions on the United States government license for the pilotage district in which the pilot applicant desires to be licensed; however, all applicants for a pilot examination scheduled to be given before July 1, 2008, must have the United States pilotage endorsement at the time of application; and

(C) The board may require that applicants and pilots have federal licenses and endorsements as it deems appropriate; and

(iv) Successfully completes a board-specified training program.

(b) In addition to the requirements of (a) of this subsection, a pilot applicant must meet such other qualifications as may be required by the board.

(c) A person applying for a license under this section shall not have been convicted of an offense involving drugs or the personal consumption of alcohol in the twelve months prior to the date of application. This restriction does not apply to license renewals under this section.

(3) The board may establish such other training license and pilot license requirements as it deems appropriate.

(4) Pilot applicants shall be evaluated and may be ranked for entry into a board-specified training program in a manner specified by the board based on their performance on a written examination or examinations established by the board, performance on other evaluation exercises as may be required by the board, and other criteria or qualifications as may be set by the board.

When the board determines that the demand for pilots requires entry of an applicant into the training program it shall issue a training license to that applicant, but under no circumstances may an applicant be issued a training license more than four years after taking the written entry examination. The training license authorizes the trainee to do such actions as are specified in the training program.

After the completion of the training program the board shall evaluate the trainee's performance and knowledge. The board, as it deems appropriate, may then issue a pilot license, delay the issuance of the pilot license, deny the issuance of the pilot license, or require further training and evaluation.

(5) The board may (a) appoint a special independent committee or (b) contract with private or governmental entities knowledgeable and experienced in the development, administration, and grading of licensing examinations or simulator evaluations for marine pilots, or (c) do both. Active, licensed pilots designated by the board may participate in the development, administration, and grading of examinations and other evaluation exercises. If the board does appoint a special examination or evaluation development committee, it is authorized to pay the members of the committee the same compensation and travel expenses as received by members of the board. Any person who willfully gives advance knowledge of information contained on a pilot examination or other evaluation exercise is guilty of a gross misdemeanor.

(6) This subsection applies to the review of a pilot applicant's written examinations and evaluation exercises to qualify to be placed on a waiting list to become a pilot trainee. Failure to comply with the process set forth in this subsection renders the results of the pilot applicant's written examinations and evaluation exercises final. A pilot applicant may seek board review, administrative review, and judicial review of the results of the written examinations and evaluation exercises in the following manner:

(a) A pilot applicant who seeks a review of the results of his or her written examinations or evaluation exercises must request from the board-appointed or board-designated examination committee an administrative review of the results of his or her written examinations or evaluation exercises as set forth by board rule.

(b) The determination of the examination committee's review of a pilot applicant's examination results becomes final after thirty days from the date of service of written notification of the committee's determination unless a full adjudicative hearing before an administrative law judge has been requested by the pilot applicant before the thirty-day period has expired, as set forth by board rule.

(c) When a full adjudicative hearing has been requested by the pilot applicant, the board shall request the appointment of an administrative law judge under chapter 34.12 RCW who has sufficient experience and familiarity with pilotage matters to be able to conduct a fair and impartial hearing. The hearing shall be governed by chapter 34.05 RCW. The administrative law judge shall issue an initial order.

(d) The initial order of the administrative law judge is final unless within thirty days of the date of service of the initial order the board or pilot applicant requests review of the initial order under chapter 34.05 RCW.

(e) The board may appoint a person to review the initial order and to prepare and enter a final order as governed by chapter 34.05 RCW and as set forth by board rule. The person appointed by the board under this subsection (6)(e) is called the board reviewing officer.

(7) Pilots are licensed under this section for a term of five years from and after the date of the issuance of their respective state licenses. Licenses must thereafter be renewed as a matter of course, unless the board withholds the license for

good cause. Each pilot shall pay to the state treasurer an annual license fee in an amount set by the board by rule. Pursuant to RCW 43.135.055, the fees established under this subsection may be increased through the fiscal year ending June 30, 2011. The fees must be deposited in the pilotage account. The board may assess partially active or inactive pilots a reduced fee.

(8) All pilots and pilot trainees are subject to an annual physical examination by a physician chosen by the board. The physician shall examine the pilot's or pilot trainee's heart, blood pressure, circulatory system, lungs and respiratory system, eyesight, hearing, and such other items as may be prescribed by the board. After consultation with a physician and the United States coast guard, the board shall establish minimum health standards to ensure that pilots and pilot trainees licensed by the state are able to perform their duties. Within ninety days of the date of each annual physical examination, and after review of the physician's report, the board shall make a determination of whether the pilot or pilot trainee is fully able to carry out the duties of a pilot or pilot trainee under this chapter. The board may in its discretion check with the appropriate authority for any convictions of or information regarding offenses by a licensed pilot or pilot trainee involving drugs or the personal consumption of alcohol in the prior twelve months.

(9) The board may require vessel simulator training for a pilot trainee and shall require vessel simulator training for a licensed pilot subject to RCW 88.16.105. The board shall also require vessel simulator training in the first year of active duty for a new pilot and at least once every five years for all active pilots.

(10) The board shall prescribe, pursuant to chapter 34.05 RCW, such reporting requirements and review procedures as may be necessary to assure the accuracy and validity of license and service claims. Willful misrepresentation of such required information by a pilot applicant shall result in disqualification of the pilot applicant. [2009 c 470 § 708; 2008 c 128 § 4; 2007 c 518 § 706; 2005 c 26 § 2; 1999 sp.s. c 1 § 607; 1995 c 175 § 1; 1991 c 200 § 1002. Prior: 1990 c 116 § 27; 1990 c 112 § 1; 1987 c 264 § 2; 1986 c 122 § 1; 1981 c 303 § 1; 1979 ex.s. c 207 § 3; 1977 ex.s. c 337 § 7; 1967 c 15 § 5; 1935 c 18 § 8; RRS § 9871-8; prior: 1907 c 147 § 1; 1888 p 176 § 8.]

Effective date—2009 c 470: See note following RCW 46.68.170.

Severability—Effective date—2007 c 518: See notes following RCW 46.68.170.

Effective date—2005 c 26: See note following RCW 88.16.035.

Severability—Effective date—1999 sp.s. c 1: See notes following RCW 43.19.1906.

Effective date—1995 c 175: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 c 175 § 2.]

Effective dates—Severability—1991 c 200: See RCW 90.56.901 and 90.56.904.

Findings—Severability—1990 c 116: See notes following RCW 90.56.210.

Severability—1977 ex.s. c 337: See note following RCW 88.16.005.

Chapter 88.46 RCW
VESSEL OIL SPILL PREVENTION AND RESPONSE

Sections

88.46.010 Definitions.
88.46.125 Emergency response system—Funding—Intent—Finding.
88.46.130 Emergency response system.
88.46.135 Emergency response system—Vessel planning standards.
88.46.139 Emergency response system—Adequacy determination—Practice drills.

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

(1) "Best achievable protection" means the highest level of protection that can be achieved through the use of the best achievable technology and those staffing levels, training procedures, and operational methods that provide the greatest degree of protection achievable. The director's determination of best achievable protection shall be guided by the critical need to protect the state's natural resources and waters, while considering (a) the additional protection provided by the measures; (b) the technological achievability of the measures; and (c) the cost of the measures.

(2) "Best achievable technology" means the technology that provides the greatest degree of protection taking into consideration (a) processes that are being developed, or could feasibly be developed, given overall reasonable expenditures on research and development, and (b) processes that are currently in use. In determining what is best achievable technology, the director shall consider the effectiveness, engineering feasibility, and commercial availability of the technology.

(3) "Bulk" means material that is stored or transported in a loose, unpackaged liquid, powder, or granular form capable of being conveyed by a pipe, bucket, chute, or belt system.

(4) "Cargo vessel" means a self-propelled ship in commerce, other than a tank vessel or a passenger vessel, of three hundred or more gross tons, including but not limited to, commercial fish processing vessels and freighters.

(5) "Covered vessel" means a tank vessel, cargo vessel, or passenger vessel.

(6) "Department" means the department of ecology.

(7) "Director" means the director of the department of ecology.

(8) "Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying, or dumping.

(9)(a) "Facility" means any structure, group of structures, equipment, pipeline, or device, other than a vessel, located on or near the navigable waters of the state that transfers oil in bulk to or from a tank vessel or pipeline, that is used for producing, storing, handling, transferring, processing, or transporting oil in bulk.

(b) A facility does not include any: (i) Railroad car, motor vehicle, or other rolling stock while transporting oil over the highways or rail lines of this state; (ii) retail motor vehicle motor fuel outlet; (iii) facility that is operated as part of an exempt agricultural activity as provided in RCW 82.04.330; (iv) underground storage tank regulated by the department or a local government under chapter 90.76 RCW; or (v) marine fuel outlet that does not dispense more than three thousand gallons of fuel to a ship that is not a covered vessel, in a single transaction.

(10) "Marine facility" means any facility used for tank vessel wharfage or anchorage, including any equipment used for the purpose of handling or transferring oil in bulk to or from a tank vessel.

(11) "Navigable waters of the state" means those waters of the state, and their adjoining shorelines, that are subject to the ebb and flow of the tide and/or are presently used, have been used in the past, or may be susceptible for use to transport intrastate, interstate, or foreign commerce.

(12) "Offshore facility" means any facility located in, on, or under any of the navigable waters of the state, but does not include a facility any part of which is located in, on, or under any land of the state, other than submerged land. "Offshore facility" does not include a marine facility.

(13) "Oil" or "oils" means oil of any kind that is liquid at atmospheric temperature and any fractionation thereof, including, but not limited to, crude oil, petroleum, gasoline, fuel oil, diesel oil, biological oils and blends, oil sludge, oil refuse, and oil mixed with wastes other than dredged spoil. Oil does not include any substance listed in Table 302.4 of 40 C.F.R. Part 302 adopted August 14, 1989, under section 101(14) of the federal comprehensive environmental response, compensation, and liability act of 1980, as amended by P.L. 99-499.

(14) "Onshore facility" means any facility any part of which is located in, on, or under any land of the state, other than submerged land, that because of its location, could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters of the state or the adjoining shorelines.

(15)(a) "Owner or operator" means (i) in the case of a vessel, any person owning, operating, or chartering by demise, the vessel; (ii) in the case of an onshore or offshore facility, any person owning or operating the facility; and (iii) in the case of an abandoned vessel or onshore or offshore facility, the person who owned or operated the vessel or facility immediately before its abandonment.

(b) "Operator" does not include any person who owns the land underlying a facility if the person is not involved in the operations of the facility.

(16) "Passenger vessel" means a ship of three hundred or more gross tons with a fuel capacity of at least six thousand gallons carrying passengers for compensation.

(17) "Person" means any political subdivision, government agency, municipality, industry, public or private corporation, copartnership, association, firm, individual, or any other entity whatsoever.

(18) "Race Rocks light" means the nautical landmark located southwest of the city of Victoria, British Columbia.

(19) "Severe weather conditions" means observed nautical conditions with sustained winds measured at forty knots and wave heights measured between twelve and eighteen feet.

(20) "Ship" means any boat, ship, vessel, barge, or other floating craft of any kind.

(21) "Spill" means an unauthorized discharge of oil into the waters of the state.

(22) "Strait of Juan de Fuca" means waters off the northern coast of the Olympic Peninsula seaward of a line drawn from New Dungeness light in Clallam county to Discovery Island light on Vancouver Island, British Columbia, Canada.

(23) "Tank vessel" means a ship that is constructed or adapted to carry, or that carries, oil in bulk as cargo or cargo residue, and that:

(a) Operates on the waters of the state; or

(b) Transfers oil in a port or place subject to the jurisdiction of this state.

(24) "Vessel emergency" means a substantial threat of pollution originating from a covered vessel, including loss or serious degradation of propulsion, steering, means of navigation, primary electrical generating capability, and seakeeping capability.

(25) "Waters of the state" includes lakes, rivers, ponds, streams, inland waters, underground water, salt waters, estuaries, tidal flats, beaches and lands adjoining the seacoast of the state, sewers, and all other surface waters and watercourses within the jurisdiction of the state of Washington.

(26) "Worst case spill" means: (a) In the case of a vessel, a spill of the entire cargo and fuel of the vessel complicated by adverse weather conditions; and (b) in the case of an onshore or offshore facility, the largest foreseeable spill in adverse weather conditions. [2009 c 11 § 7; 2007 c 347 § 5; 2000 c 69 § 1; 1992 c 73 § 18; 1991 c 200 § 414.]

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

Findings—Intent—Emergency response system—Apportionment of costs—Recommendations—Coordination with British Columbia—2009 c 11: See notes following RCW 88.46.130.

Effective dates—Severability—1992 c 73: See RCW 82.23B.902 and 90.56.905.

88.46.125 Emergency response system—Funding—Intent—Finding. (1) It is the intent of the legislature to provide the various components of the maritime industry with the tools necessary to satisfy the requirements of RCW 88.46.130 in the most cost-effective manner. In doing, the legislature encourages, but does not mandate, the maritime industry to unite behind their mutual interests and responsibilities and identify or form a single umbrella organization that allows all affected covered vessels to equitably share the costs inherent in the implementation of RCW 88.46.130.

(2) The legislature further finds that, given the broad range of covered vessel types and sizes, an equitable sharing of the costs of implementing RCW 88.46.130 will likely mean that not all covered vessels will be responsible for providing the same amount of funding. Any umbrella organization that is identified or formed to satisfy the requirements of chapter 11, Laws of 2009 should consider the multitude of factors that comprise the risk of vessel emergencies and the likelihood of initiating a response from the emergency response vessel required by RCW 88.46.130.

(3) The legislature intends to provide the authority for any operator of a covered vessel that feels as though an umbrella organization that is identified, formed, or proposed for formation does not equitably share the costs of compliance with RCW 88.46.130 with the covered vessel in question, or the class of vessel to which the covered vessel belongs, to either contract directly with an adequate emergency response vessel or form or join a discreet umbrella organization representing the appropriate segment of the maritime industry. However, if the operator of a covered vessel chooses not to join a proposed or existing umbrella orga-

nization, or finds that negotiations leading to the formation of an umbrella organization are not progressing in an adequate manner, the legislature requests, but does not require, that the vessel operator contact the department and provide official notice of their concern as to how the umbrella group in question failed in establishing an equitable cost-share strategy.

(4) The department shall collect and maintain all notices received under this section and shall summarize any reports received by the operators of covered vessels and report the summation to the appropriate committees of the legislature upon request by a legislative committee. [2009 c 11 § 4.]

Findings—Intent—Emergency response system—Apportionment of costs—Recommendations—Coordination with British Columbia—2009 c 11: See notes following RCW 88.46.130.

88.46.130 Emergency response system. (1) By July 1, 2010, the owner or operator of a covered vessel transiting to or from a Washington port through the Strait of Juan de Fuca, except for transits extending no further west than Race Rocks light, shall establish and fund an emergency response system that provides for an emergency response towing vessel to be stationed at Neah Bay.

(2) Any emergency response towing vessel provided under this section must:

(a) Be available to serve vessels in distress in the Strait of Juan de Fuca and off of the western coast of the state from Cape Flattery light in Clallam county south to Cape Disappointment light in Pacific county; and

(b) Meet the requirements specified in RCW 88.46.135.

(3) In addition to meeting requirements specified in RCW 88.46.060, contingency plans for covered vessels operating in the Strait of Juan de Fuca must provide for the emergency response system required by this section. Documents describing how compliance with this section will be achieved must be submitted to the department by December 1, 2009. An initial contingency plan submitted to the department after December 1, 2009, must be accompanied by documents demonstrating compliance with this section.

(4) The requirements of this section are met if:

(a) Owners or operators of covered vessels provide an emergency response towing vessel that complies with subsection (2) of this section; or

(b) The United States government implements a system of protective measures that the department determines to be substantially equivalent to the requirements of this section as long as the emergency response towing vessel required by this section is stationed at Neah Bay. [2009 c 11 § 2; 1991 c 200 § 426.]

Findings—Intent—2009 c 11: "(1) The legislature finds that the northern coast of the Olympic Peninsula and Washington's west coast from Cape Flattery south to Cape Disappointment:

(a) Possess uniquely rich and highly vulnerable biological, marine, and cultural resources supporting some of the nation's most valuable commercial, sport, and tribal fisheries;

(b) Sustain endangered species and numerous species of vulnerable marine mammals; and

(c) Are internationally recognized through extraordinary designations including a world heritage site, a national park, a national marine sanctuary, national wildlife refuges, a maritime area off-limits to shipping, and tribal lands and fishing areas of federally recognized coastal Indian tribes.

(2) The legislature further finds that these coasts are periodically beset by severe storms with dangerously high seas and by strong currents, obscuring fog, and other conditions that imperil vessels and crews. When vessels suffer damage or founder, the coasts are likewise imperiled, particularly if oil is spilled into coastal waters. Oil spills pose great potential risks to treasured resources.

(3) The legislature further finds that Washington has maintained an emergency response tug at Neah Bay since 1999 to protect state waters from maritime casualties and resulting oil spills. The tug is necessary because of the peculiarities of local waters that call for special precautionary measures. The tug has demonstrated its necessity and capability by responding to forty-two vessels in need of assistance. State funding for the tug is scheduled to end June 30, 2009.

(4) The legislature intends that the maritime industry should provide and fully fund at least one year-round emergency response tug at Neah Bay, with necessary logistical and operational support, and that any tug provided by the maritime industry pursuant to this act should meet or exceed technical performance requirements specified in the state's fiscal year 2009 contract for the Neah Bay emergency response tug." [2009 c 11 § 1.]

Emergency response system—Apportionment of costs—Recommendations—2009 c 11: "(1) Designated representatives of the owners and operators of all classes of covered vessels shall negotiate, given the intent of section 4 of this act, a system to determine the equitable apportionment of costs of the emergency response system required by this act.

(2) Participants to the negotiations shall provide interim progress reports to the appropriate committees of the legislature by October 31, 2009, and again by December 1, 2009, the latter date coinciding with the deadline for contingency plans for covered vessels operating in the Strait of Juan de Fuca to provide for the emergency response system required by RCW 88.46.130. These reports shall provide available information relating to:

(a) The anticipated average annual cost of providing the emergency response system;

(b) The methodology for determining the anticipated average annual cost for each class of covered vessel, including:

(i) A system for crediting enhanced navigational or structural characteristics;

(ii) Appropriate limits on total cost for vessels that frequently transit the Strait of Juan de Fuca, except for transits extending no further west than Race Rocks light; and

(iii) Consideration of current economic conditions; and

(c) Any impediment to equitable apportionment of costs.

(3) As used in this section, "class of covered vessel" means:

(a) Oil tankers;

(b) Tank barges;

(c) Tug and oil barge combinations;

(d) Cargo vessels;

(e) Passenger vessels; and

(f) Other covered vessels.

(4) If the representatives designated under this section to participate in negotiations fail to achieve the goals of this section or otherwise choose not to report the outcomes to the legislature, the department of ecology shall, by December 1, 2009, deliver the summation of any reports received under section 4 of this act.

(5) This section expires June 30, 2010." [2009 c 11 § 5.]

Emergency response system—Coordination with British Columbia—2009 c 11: "(1) The director of the department of ecology, or the director's designee, shall initiate discussions with the director's equivalent position in the government for the Canadian province of British Columbia to explore options for Washington and British Columbia to share the marine response assets required under this act.

(2) Any progress or outcomes from the discussions initiated under this section must be reported to the appropriate committees of the legislature no later than January 1, 2011.

(3) This section expires July 31, 2011." [2009 c 11 § 8.]

88.46.135 Emergency response system—Vessel planning standards. (1) An emergency response towing vessel that is a part of the emergency response system required by RCW 88.46.130 must be stationed at Neah Bay and be available to respond to vessel emergencies. The towing vessel must be able to satisfy the following minimum planning standards:

(a) Be underway within twenty minutes of a decision to deploy;

(b) Be able to deploy at any hour of any day to provide emergency assistance within the capabilities of the minimum

planning standards and be safely manned to remain underway for at least forty-eight hours;

(c) In severe weather conditions, be capable of making up to, stopping, holding, and towing a drifting or disabled vessel of one hundred eighty thousand metric dead weight tons;

(d) In severe weather conditions, be capable of holding position within one hundred feet of another vessel;

(e) Be equipped with and maneuverable enough to effectively employ a ship anchor chain recovery hook and line throwing gun;

(f) Be capable of a bollard pull of at least seventy short tons; and

(g) Be equipped with appropriate equipment for:

(i) Damage control patching;

(ii) Vessel dewatering;

(iii) Air safety monitoring; and

(iv) Digital photography.

(2) The requirements of this section may be fulfilled by one or more private organizations or nonprofit cooperatives providing umbrella coverage under contract to single or multiple covered vessels.

(3)(a) The department must be authorized to contract with the emergency response towing vessel, at the discretion of the department, in response to a potentially emerging maritime casualty or as a precautionary measure during severe storms. All instances of use by the department must be paid for by the department.

(b) Covered vessels that are required to provide an emergency response towing vessel under RCW 88.46.130 may not restrict the emergency response towing vessel from responding to distressed vessels that are not covered vessels.

(4) Nothing in this section limits the ability of a covered vessel to contract with an emergency response towing vessel with capabilities that exceed the minimum capabilities provided for a towing vessel in this section.

(5) The covered vessel owner or operator shall submit a written report to the department as soon as practicable regarding an emergency response system deployment, including photographic documentation determined by the department to be of adequate quality. The report must provide a detailed description of the incident necessitating a response and the actions taken to render assistance under the emergency response system. [2009 c 11 § 3.]

Findings—Intent—Emergency response system—Apportionment of costs—Recommendations—Coordination with British Columbia—2009 c 11: See notes following RCW 88.46.130.

88.46.139 Emergency response system—Adequacy determination—Practice drills. (1) As part of reviewing contingency plans submitted under RCW 88.46.130, the department may determine the adequacy of the emergency response system required in RCW 88.46.130 through practice drills that test compliance with the requirements of RCW 88.46.135. Practice drills may be conducted without prior notice.

(2) Each successful response to a vessel emergency may be considered by the department to satisfy a drill covering this portion of a covered vessel's contingency plan.

(3) Drills of the emergency response system required in RCW 88.46.130 must emphasize the system's ability to respond to a potentially worst case vessel emergency scenario. [2009 c 11 § 6.]

Findings—Intent—Emergency response system—Apportionment of costs—Recommendations—Coordination with British Columbia—2009 c 11: See notes following RCW 88.46.130.

Title 89

RECLAMATION, SOIL CONSERVATION, AND LAND SETTLEMENT

Chapters

89.08 Conservation districts.
89.12 Reclamation and irrigation districts in reclamation areas.

Chapter 89.08 RCW
CONSERVATION DISTRICTS

Sections

89.08.040 Members—Compensation and travel expenses—Records, rules, hearings, etc.
89.08.050 Employees—Delegation—Quorum.
89.08.070 General duties of commission.

89.08.040 Members—Compensation and travel expenses—Records, rules, hearings, etc. Members shall be compensated in accordance with RCW 43.03.250 and shall be entitled to travel expenses in accordance with RCW 43.03.050 and 43.03.060 incurred in the discharge of their duties.

The commission shall keep a record of its official actions, shall adopt a seal, which shall be judicially noticed, and may perform such acts, hold such public hearings, and adopt such rules as may be necessary for the execution of its functions under chapter 184, Laws of 1973 1st ex. sess. The state department of ecology is empowered to pay the travel expenses of the elected and appointed members of the state conservation commission, and the salaries, wages and other expenses of such administrative officers or other employees as may be required under the provisions of this chapter. [2009 c 55 § 1; 1984 c 287 § 112; 1975-'76 2nd ex.s. c 34 § 179; 1973 1st ex.s. c 184 § 5; 1961 c 240 § 4; 1955 c 304 § 4. Prior: 1951 c 216 § 4; 1949 c 106 § 1, part; 1939 c 187 § 4, part; Rem. Supp. 1949 § 10726-4, part.]

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

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

89.08.050 Employees—Delegation—Quorum. The commission may employ an administrative officer, and such technical experts and such other agents and employees, permanent and temporary as it may require, and shall determine their qualifications, duties, and compensation. The commission may call upon the attorney general for such legal services as it may require.

It shall have authority to delegate to its chair, to one or more of its members, to one or more agents or employees such duties and powers as it deems proper. As long as the commission and the office of financial management under

the provisions of chapter 43.82 RCW deems it appropriate and financially justifiable to do so, the commission shall be supplied with suitable office accommodations at the central office of the department of ecology, and shall be furnished the necessary supplies and equipment.

The commission shall organize annually and select a chair from among its members, who shall serve for one year from the date of the chair's selection. A majority of the commission shall constitute a quorum and all actions of the commission shall be by a majority vote of the members present and voting at a meeting at which a quorum is present. [2009 c 55 § 2; 1973 1st ex.s. c 184 § 6; 1961 c 240 § 5; 1955 c 304 § 5. Prior: 1949 c 106 § 1, part; 1939 c 187 § 4, part; Rem. Supp. 1949 § 10726-4, part.]

89.08.070 General duties of commission. In addition to the duties and powers hereinafter conferred upon the commission, it shall have the following duties and powers:

(1) To offer such assistance as may be appropriate to the supervisors of conservation districts organized under the provisions of chapter 184, Laws of 1973 1st ex. sess., in the carrying out of any of their powers and programs:

(a) To assist and guide districts in the preparation and carrying out of programs for resource conservation authorized under chapter 184, Laws of 1973 1st ex. sess.;

(b) To review district programs;

(c) To coordinate the programs of the several districts and resolve any conflicts in such programs;

(d) To facilitate, promote, assist, harmonize, coordinate, and guide the resource conservation programs and activities of districts as they relate to other special purpose districts, counties, and other public agencies.

(2) To keep the supervisors of each of the several conservation districts organized under the provisions of chapter 184, Laws of 1973 1st ex. sess. informed of the activities and experience of all other districts organized hereunder, and to facilitate an interchange of advice and experience between such districts and cooperation between them.

(3) To review agreements, or forms of agreements, proposed to be entered into by districts with other districts or with any state, federal, interstate, or other public or private agency, organization, or individual, and advise the districts concerning such agreements or forms of agreements.

(4) To secure the cooperation and assistance of the United States and any of its agencies, and of agencies of this state in the work of such districts.

(5) To recommend the inclusion in annual and longer term budgets and appropriation legislation of the state of Washington of funds necessary for appropriation by the legislature to finance the activities of the commission and the conservation districts; to administer the provisions of any law hereinafter enacted by the legislature appropriating funds for expenditure in connection with the activities of conservation districts; to distribute to conservation districts funds, equipment, supplies and services received by the commission for that purpose from any source, subject to such conditions as shall be made applicable thereto in any state or federal statute or local ordinance making available such funds, property or services; to adopt rules establishing guidelines and suitable controls to govern the use by conservation districts of such funds, property and services; and to review all budgets, administrative procedures and operations of such districts and advise the districts concerning their conformance with applicable laws and rules.

(6) To encourage the cooperation and collaboration of state, federal, regional, interstate and local public and private agencies with the conservation districts, and facilitate arrangements under which the conservation districts may serve county governing bodies and other agencies as their local operating agencies in the administration of any activity concerned with the conservation of renewable natural resources.

(7) To disseminate information throughout the state concerning the activities and programs of the conservation districts organized hereunder, and to encourage the formation of such districts in areas where their organization is desirable; to make available information concerning the needs and the work of the conservation district and the commission to the governor, the legislature, executive agencies of the government of this state, political subdivisions of this state, cooperating federal agencies, and the general public.

(8) Pursuant to procedures developed mutually by the commission and other state and local agencies that are authorized to plan or administer activities significantly affecting the conservation of renewable natural resources, to receive from such agencies for review and comment suitable descriptions of their plans, programs and activities for purposes of coordination with district conservation programs; to arrange for and participate in conferences necessary to avoid conflict among such plans and programs, to call attention to omissions, and to avoid duplication of effort.

(9) To compile information and make studies, summaries and analysis of district programs in relation to each other and to other resource conservation programs on a statewide basis.

(10) To assist conservation districts in obtaining legal services from state and local legal officers.

(11) To require annual reports from conservation districts, the form and content of which shall be developed by the commission.

(12) To establish by rule, with the assistance and advice of the state auditor's office, adequate and reasonably uniform accounting and auditing procedures which shall be used by conservation districts.

(13) To seek and accept grants from any source, public or private, to fulfill the purposes of the agency. The commission may also accept gifts or endowments that are made from time to time, in trust or otherwise, including real and personal property, for the use and benefit consistent with the purposes of this chapter.

(14) To conduct conferences, seminars, and training sessions consistent with the purposes of this chapter, and may accept grants, gifts, and contributions, and may contract for services, to accomplish these activities. The commission may recover costs for these activities, whether the activity is sponsored or cosponsored by the commission, at a rate determined by the commission. The commission may provide reimbursement to participants in these activities and other commission sponsored meetings and events, as appropriate and approved by the commission, consistent with applicable statutes. The commission may provide meals for participants in working meetings.

(15) To adopt rules to implement this section as it deems appropriate. [2009 c 55 § 3; 1973 1st ex.s. c 184 § 8; 1961 c 240 § 6; 1955 c 304 § 7. Prior: 1949 c 106 § 1, part; 1939 c 187 § 4, part; Rem. Supp. 1949 § 10726-4, part.]

Chapter 89.12 RCW

RECLAMATION AND IRRIGATION DISTRICTS IN RECLAMATION AREAS

Sections

89.12.050 Contracts with United States—Permissible provisions.
89.12.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. *(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*

89.12.050 Contracts with United States—Permissible provisions. (1) A district may enter into repayment and other contracts with the United States under the terms of the federal reclamation laws in matters relating to federal reclamation projects, and may with respect to lands within its boundaries include in the contract, among others, an agreement that:

(a) The district will not deliver water by means of the project works provided by the United States to or for excess lands not eligible therefor under applicable federal law.

(b) As a condition to receiving water by means of the project works, each excess landowner in the district, unless his excess lands are otherwise eligible to receive water under applicable federal law, shall be required to execute a recordable contract covering all of his excess lands within the district.

(c) All excess lands within the district not eligible to receive water by means of the project works shall be subject to assessment in the same manner and to the same extent as lands eligible to receive water, subject to such provisions as the secretary may prescribe for postponement in payment of all or part of the assessment but not beyond a date five years from the time water would have become available for such lands had they been eligible therefor.

(d) The secretary is authorized to amend any existing contract, deed, or other document to conform to the provisions of applicable federal law as it now exists. Any such amendment may be filed for record under RCW 89.12.080.

(2) A district may enter into a contract with the United States for the transfer of operations and maintenance of the works of a federal reclamation project, but the contract does not impute to the district negligence for design or construction defects or deficiencies of the transferred works. [2009 c 145 § 3; 1963 c 3 § 2; 1957 c 165 § 3; 1951 c 200 § 1; 1943 c 275 § 5; Rem. Supp. 1943 § 7525-24.]

89.12.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. ***(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 198.]

Title 90

WATER RIGHTS—ENVIRONMENT

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Chapter 90.03 RCW

WATER CODE

Sections

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90.03.110 Determination of water rights—Petition—Statement and plan. (1) Upon the filing of a petition with the department by a planning unit or by one or more persons claiming the right to any waters within the state or when, after investigation, in the judgment of the department, the public interest will be served by a determination of the rights thereto, the department shall prepare a statement of the facts, together with a plan or map of the locality under investigation, and file such statement and plan or map in the superior court of the county in which said water is situated, or, in case such water flows or is situated in more than one county, in the county which the department shall determine to be the most convenient to the parties interested therein. Such a statement shall:

(a) Either (i) identify each person or entity owning real property situated within the area to be adjudicated but outside the boundaries of a city, town, or special purpose district that provides water to property within its service area; (ii) identify all known persons claiming a right to the water sought to be determined; or (iii) identify both; and

(b) Include a brief statement of the facts in relation to such water, and the necessity for a determination of the rights thereto.

(2) Prior to filing an adjudication under this chapter, the department shall:

(a) Consult with the administrative office of the courts to determine whether sufficient judicial resources are available to commence and to prosecute the adjudication in a timely manner; and

(b) Report to the appropriate committees of the legislature on the estimated budget needs for the court and the department to conduct the adjudication. [2009 c 332 § 1; 1987 c 109 § 72; 1917 c 117 § 14; RRS § 7364. Formerly RCW 90.12.010.]

Application—2009 c 332: "Except for section 14 of this act, this act applies only to adjudications initiated after July 26, 2009." [2009 c 332 § 21.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

Additional powers and duties enumerated—Payment for from reclamation account: RCW 89.16.055.

Application of RCW sections to specific proceedings: RCW 90.14.200.

Schedule of fees: RCW 90.03.470.

90.03.120 Determination of water rights—Order—Summons—Necessary parties—Use of innovative practices and technologies encouraged. (1) Upon the filing of the statement and map as provided in RCW 90.03.110 the judge of such superior court shall make an order directing summons to be issued, and fixing the return day thereof, which shall be not less than one hundred nor more than one hundred thirty days, after the making of such order: PROVIDED, That for good cause, the court, at the request of the department, may modify said time period.

(2) A summons issued under this section shall be issued out of said superior court, signed and attested by the clerk thereof, in the name of the state of Washington, as plaintiff, against all known persons identified by the department under RCW 90.03.110. The summons shall contain a brief statement of the objects and purpose of the proceedings and shall require the defendants to appear on the return day thereof, and make and file an adjudication claim to, or interest in, the water involved and a statement that unless they appear at the time and place fixed and assert such right, judgment will be entered determining their rights according to the evidence: PROVIDED, HOWEVER, That any persons claiming the right to water by virtue of a contract with a claimant to the right to divert the same, shall not be necessary parties to the proceeding.

(3) To the extent consistent with court rules and subject to the availability of funds provided either by direct appropriation or funded through the administrative office of the courts for this specific adjudicative proceeding, the court is encouraged to conduct the water rights adjudication employing innovative practices and technologies appropriate to large scale and complex cases, such as: (a) Electronic filing of documents, including notice and claims; (b) appearance via teleconferencing; (c) prefiling of testimony; and (d) other practices and technologies consistent with court rules and emerging technologies. [2009 c 332 § 2; 1987 c 109 § 73; 1977 ex.s. c 357 § 1; 1917 c 117 § 15; RRS § 7365. Formerly RCW 90.12.020.]

Application—2009 c 332: See note following RCW 90.03.110.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

90.03.130 Determination of water rights—Service of summons. Service of said summons shall be made in the same manner and with the same force and effect as service of summons in civil actions commenced in the superior courts of the state: PROVIDED, That as an alternative to personal service, service may be made by certified mail, with return receipt signed and dated by defendant, a spouse of a defendant, or another person authorized to accept service. If the defendants, or either of them, cannot be found within the state of Washington, of which the return of the sheriff of the county in which the proceeding is pending or the failure to sign a receipt for certified mail shall be prima facie evidence, upon the filing of an affidavit by the department, or its attorney, in conformity with the statute relative to the service of summons by publication in civil actions, such service may be made by publication in a newspaper of general circulation in the county in which such proceeding is pending, and also publication of said summons in a newspaper of general circulation in each county in which any portion of the water is situated, once a week for six consecutive weeks (six publications). The summons by publication shall state that adjudication claims must be filed within sixty days after the last publication or before the return date, whichever is later. In cases where personal service or service by certified mail is had, summons must be served at least sixty days before the return day thereof. For summons by certified mail, completion of service occurs upon the date of receipt by the defendant.

Personal service of summons may be made by department of ecology employees for actions pertaining to water rights. [2009 c 332 § 6; 1987 c 109 § 74; 1979 ex.s. c 216 § 2; 1977 ex.s. c 357 § 2; 1929 c 122 § 1; 1917 c 117 § 16; RRS § 7366. Formerly RCW 90.12.030.]

Application—2009 c 332: See note following RCW 90.03.110.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

Effective date—Severability—1979 ex.s. c 216: See notes following RCW 90.03.245.

Commencement of actions (service of summons): Chapter 4.28 RCW.

Manner of publication and form of summons: RCW 4.28.110.

Service of summons by publication—When authorized: RCW 4.28.100.

90.03.140 Determination of water rights—Adjudication claim by defendant. (1) On or before the date specified in the summons, each defendant shall file with the clerk of the superior court an adjudication claim on a form and in a manner provided by the department, and mail or electronically mail a copy to the department. The department shall provide information that will assist claimants of small uses of water in completing their adjudication claims. The adjudication claim must contain substantially the following, except that when the legal basis for the claimed right is a federally reserved right, the information must be filed only as applicable:

(a) The name, mailing address, and telephone contact number of each defendant on the claim, and e-mail address, if available;

(b) The purpose or purposes of use of the water and the annual and instantaneous quantities of water put to beneficial use;

(c) For each use, the date the first steps were taken under the law to put the water to beneficial use;

(d) The date of beginning and completion of the construction of wells, ditches, or other works to put the water to use;

(e) The maximum amount of land ever under irrigation and the maximum annual and instantaneous quantities of water ever used thereon prior to the date of the statement and if for power, or other purposes, the maximum annual and instantaneous quantities of water ever used prior to the date of the adjudication claim;

(f) The dates between which water is used annually;

(g) If located outside the boundaries of a city, town, or special purpose district that provides water to property within its service area, the legal description and county tax parcel number of the land upon which the water as presently claimed has been, or may be, put to beneficial use;

(h) The legal description and county tax parcel number of the subdivision of land on which the point of diversion or withdrawal is located as well as land survey and geographic positioning coordinates of the same if available;

(i) Whether a right to surface or groundwater, or both, is claimed and the source of the surface water and the location and depth of all wells;

(j) The legal basis for the claimed right;

(k) Whether a statement of claim relating to the water right was filed under chapter 90.14 RCW or whether a declaration relating to the water right was filed under chapter 90.44 RCW and, if so, the claim or declaration number, and whether the right is documented by a permit or certificate and, if so, the permit number or certificate number. When the source is a well, the well log number must be provided, when available;

(l) The amount of land and the annual and instantaneous quantities of water used thereon, or used for power or other purposes, that the defendant claims as a present right.

(2) The adjudication claim shall be verified on oath by the defendant. The department shall furnish the form for the adjudication claim. A claimant may file an adjudication claim electronically if authorized under state and local court rules. The department may assist claimants in their effort by making the department's pertinent records and information accessible electronically or by other means and through conferring with claimants. [2009 c 332 § 7; 1987 c 109 § 75; 1929 c 122 § 2; 1917 c 117 § 17; RRS § 7367. Formerly RCW 90.12.040.]

Application—2009 c 332: See note following RCW 90.03.110.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

90.03.160 Determination of water rights—Response to motions under RCW 90.03.640(3)—Notice of intent to cross-examine—Appointment of a referee—Special rules. (1) Upon filing of the department's motion or motions under RCW 90.03.640(3), any party with a claim filed under RCW 90.03.140 for the appropriation of water or waters of the subject adjudication may file and serve a response to the department's motion or motions within the time set by the court for such a response. Objections must include specific information in regard to the particular disposition against which the objection is being made. Objections must also state the underlying basis of the objection being made, including general information about the forms of evidence that support the objection. Any party may file testimony with the court and serve it on other parties. If a party intends to cross-examine a claimant or witness based on another party's prefiled testimony, the party intending to cross-examine shall file a notice of intent to cross-examine no later than fifteen days in advance of the hearing. If no notice of intent to cross-examine based on the prefiled testimony is given, then the claimant or witness is not required to appear at the hearing. Any party may present evidence in support of or in response to an objection.

(2) The superior court may appoint a referee or other judicial officer to assist the court.

(3) The superior court may adopt special rules of procedure for an adjudication of water rights under this chapter, including simplified procedures for claimants of small uses of water. The rules of procedure for a superior court apply to an adjudication of water rights under this chapter unless superseded by special rules of the court under this subsection. The superior court is encouraged to consider entering, after notice and hearing and as the court determines appropriate, pretrial orders from an adjudication commenced on October 12, 1977. [2009 c 332 § 10; 1989 c 80 § 1; 1987 c 109 § 76; 1917 c 117 § 19; RRS § 7369. Formerly RCW 90.12.060.]

Application—2009 c 332: See note following RCW 90.03.110.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

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

90.03.180 Determination of water rights—Filing fee. At the time of filing the adjudication claim as provided in RCW 90.03.140, each defendant, except the United States or an Indian tribe under 43 U.S.C. Sec. 666, shall pay to the clerk of the superior court a fee as set under RCW 36.18.016.

[2009 c 332 § 12; 1995 c 292 § 21; 1982 c 15 § 2; 1979 ex.s. c 216 § 3; 1929 c 122 § 3; 1919 c 71 § 2; 1917 c 117 § 21; RRS § 7371. Formerly RCW 90.12.080, part.]

Application—2009 c 332: See note following RCW 90.03.110.

Effective date—Severability—1979 ex.s. c 216: See notes following RCW 90.03.245.

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

90.03.200 Determination of water rights—Final decree and notice of decree—Payment of fees—Appellate review of decree. Upon the court's determination of all issues, the court shall issue a final decree and provide notice of the decree to all parties. The final decree must order each party whose rights have been confirmed, except the United States or an Indian tribe under 43 U.S.C. Sec. 666, to pay the department the fees required by RCW 90.03.470(10) and any other applicable fee schedule within ninety days after the department sends notice to the party under RCW 90.03.240. Appellate review of the decree shall be in the same manner as in other cases in equity, except that review must be sought within sixty days from the entry thereof. [2009 c 332 § 13; 1988 c 202 § 91; 1987 c 109 § 79; 1971 c 81 § 176; 1917 c 117 § 23; RRS § 7373. Formerly RCW 90.12.100.]

Application—2009 c 332: See note following RCW 90.03.110.

Severability—1988 c 202: See note following RCW 2.24.050.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

90.03.210 Determination of water rights—Interim regulation of water—Appeals. (1) During the pendency of such adjudication proceedings prior to judgment or upon review by an appellate court, the stream or other water involved shall be regulated or partially regulated according to the schedule of rights specified in the department's report upon an order of the court authorizing such regulation: PROVIDED, Any interested party may file a bond and obtain an order staying the regulation of said stream as to him, in which case the court shall make such order regarding the regulation of the stream or other water as he may deem just. The bond shall be filed within five days following the service of notice of appeal in an amount to be fixed by the court and with sureties satisfactory to the court, conditioned to perform the judgment of the court.

(2) Any appeal of a decision of the department on an application to change or transfer a water right subject to an adjudication that is being litigated actively shall be conducted as follows:

(a) The appeal shall be filed with the court conducting the adjudication and served under RCW 34.05.542(3). The content of the notice of appeal shall conform to RCW 34.05.546. Standing to appeal shall be based on the requirements of RCW 34.05.530 and is not limited to parties to the adjudication.

(b) If the appeal includes a challenge to the portion of the department's decision that pertains to tentative determinations of the validity and extent of the water right, review of those tentative determinations shall be conducted by the court consistent with the provisions of RCW 34.05.510 through 34.05.598, except that the review shall be de novo.

(c) If the appeal includes a challenge to any portion of the department's decision other than the tentative determinations of the validity and extent of the right, the court must certify to the pollution control hearings board for review and decision those portions of the department's decision. Review by the pollution control hearings board shall be conducted consistent with chapter 43.21B RCW and the board's implementing regulations, except that the requirements for filing, service, and content of the notice of appeal shall be governed by (a) of this subsection. Any party to an appeal may move the court to certify portions of the appeal to the pollution control hearings board, but the appellant must file a motion for certification no later than ninety days after the appeal is filed under this section.

(d) Appeals shall be scheduled to afford all parties full opportunity to participate before the superior court and the pollution control hearings board.

(e) Any person wishing to appeal the decision of the board made under (c) of this subsection shall seek review of the decision in accordance with chapter 34.05 RCW, except that the petition for review must be filed with the superior court conducting the adjudication.

(3) Nothing in this section shall be construed to affect or modify any treaty or other federal rights of an Indian tribe, or the rights of any federal agency or other person or entity arising under federal law. Nothing in this section is intended or shall be construed as affecting or modifying any existing right of a federally recognized Indian tribe to protect from impairment its federally reserved water rights in federal court. [2009 c 332 § 14; 2001 c 220 § 5; 1988 c 202 § 92; 1987 c 109 § 80; 1921 c 103 § 1; RRS § 7374. Formerly RCW 90.12.110.]

Intent—Construction—Effective date—2001 c 220: See notes following RCW 43.21B.110.

Severability—1988 c 202: See note following RCW 2.24.050.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

90.03.240 Determination of water rights—Certificate of adjudicated water right—Notice—Fees. Upon the court's final determination of the rights to water, the department shall issue to each person entitled to a water right by such a determination, a certificate of adjudicated water right, setting forth the name and mailing address of record with the court of such person; the priority and purpose of the right; the period during which said right may be exercised, the point of diversion or withdrawal, and the place of use; the land to which said water right is appurtenant; the maximum annual and instantaneous quantities of water allowed; and specific provisions or limitations or both under which the water right has been confirmed.

The department shall provide notice to the water right holder that the certificate has been prepared for issuance and that fees for the issuance of the certificate are due in accordance with RCW 90.03.470 and any other applicable fee schedule. If the water right holder fails to submit the required fees within one year from the date the notice was issued by the department, the department may move the court for sanctions for violation of the court's order in the final decree

requiring payment. [2009 c 332 § 15; 1987 c 109 § 82; 1917 c 117 § 26; RRS § 7377. Formerly RCW 90.12.140.]

Application—2009 c 332: See note following RCW 90.03.110.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

90.03.243 Determination of water rights—State to bear its expenses, when—County must be provided extraordinary costs imposed due to adjudication. The expenses incurred by the state in a proceeding to determine rights to water initiated under RCW 90.03.110 or 90.44.220 or upon appeal of such a determination shall be borne by the state. Subject to the availability of state funding provided either by direct appropriation or funded through the administrative office of the courts for this specific purpose, the county in which an adjudication or a suit to administer an adjudication is being held must be provided the extraordinary costs imposed on the superior court of that county due to the adjudication. [2009 c 332 § 16; 1982 c 15 § 1.]

Application—2009 c 332: See note following RCW 90.03.110.

90.03.380 Right to water attaches to land—Transfer or change in point of diversion—Transfer of rights from one district to another—Priority of water rights applications—Exemption for small irrigation impoundments. ***(Effective until June 30, 2019.)*** (1) The right to the use of water which has been applied to a beneficial use in the state shall be and remain appurtenant to the land or place upon which the same is used: PROVIDED, HOWEVER, That the right may be transferred to another or to others and become appurtenant to any other land or place of use without loss of priority of right theretofore established if such change can be made without detriment or injury to existing rights. The point of diversion of water for beneficial use or the purpose of use may be changed, if such change can be made without detriment or injury to existing rights. A change in the place of use, point of diversion, and/or purpose of use of a water right to enable irrigation of additional acreage or the addition of new uses may be permitted if such change results in no increase in the annual consumptive quantity of water used under the water right. For purposes of this section, "annual consumptive quantity" means the estimated or actual annual amount of water diverted pursuant to the water right, reduced by the estimated annual amount of return flows, averaged over the two years of greatest use within the most recent five-year period of continuous beneficial use of the water right. Before any transfer of such right to use water or change of the point of diversion of water or change of purpose of use can be made, any person having an interest in the transfer or change, shall file a written application therefor with the department, and the application shall not be granted until notice of the application is published as provided in RCW 90.03.280. If it shall appear that such transfer or such change may be made without injury or detriment to existing rights, the department shall issue to the applicant a certificate in duplicate granting the right for such transfer or for such change of point of diversion or of use. The certificate so issued shall be filed and be made a record with the department and the duplicate certificate issued to the applicant may be filed with the county auditor in like manner and with the same effect as provided in the original certificate or permit to divert water. The time period that the water right was banked under RCW 90.92.070, in an approved local water plan created under RCW 90.92.090, or the water right was subject to an agreement to not divert under RCW 90.92.050 will not be included in the most recent five-year period of continuous beneficial use for the purpose of determining the annual consumptive quantity under this section. If the water right has not been used during the previous five years but the nonuse of which qualifies for one or more of the statutory good causes or exceptions to relinquishment in RCW 90.14.140 and 90.44.520, the period of nonuse is not included in the most recent five-year period of continuous beneficial use for purposes of determining the annual consumptive quantity of water under this section.

(2) If an application for change proposes to transfer water rights from one irrigation district to another, the department shall, before publication of notice, receive concurrence from each of the irrigation districts that such transfer or change will not adversely affect the ability to deliver water to other landowners or impair the financial integrity of either of the districts.

(3) A change in place of use by an individual water user or users of water provided by an irrigation district need only receive approval for the change from the board of directors of the district if the use of water continues within the irrigation district, and when water is provided by an irrigation entity that is a member of a board of joint control created under chapter 87.80 RCW, approval need only be received from the board of joint control if the use of water continues within the area of jurisdiction of the joint board and the change can be made without detriment or injury to existing rights.

(4) This section shall not apply to trust water rights acquired by the state through the funding of water conservation projects under chapter 90.38 RCW or RCW 90.42.010 through 90.42.070.

(5)(a) Pending applications for new water rights are not entitled to protection from impairment, injury, or detriment when an application relating to an existing surface or ground water right is considered.

(b) Applications relating to existing surface or ground water rights may be processed and decisions on them rendered independently of processing and rendering decisions on pending applications for new water rights within the same source of supply without regard to the date of filing of the pending applications for new water rights.

(c) Notwithstanding any other existing authority to process applications, including but not limited to the authority to process applications under WAC 173-152-050 as it existed on January 1, 2001, an application relating to an existing surface or ground water right may be processed ahead of a previously filed application relating to an existing right when sufficient information for a decision on the previously filed application is not available and the applicant for the previously filed application is sent written notice that explains what information is not available and informs the applicant that processing of the next application will begin. The previously filed application does not lose its priority date and if the information is provided by the applicant within sixty days, the previously filed application shall be processed at that time. This subsection (5)(c) does not affect any other existing authority to process applications.

(d) Nothing in this subsection (5) is intended to stop the processing of applications for new water rights.

(6) No applicant for a change, transfer, or amendment of a water right may be required to give up any part of the applicant's valid water right or claim to a state agency, the trust water rights program, or to other persons as a condition of processing the application.

(7) In revising the provisions of this section and adding provisions to this section by chapter 237, Laws of 2001, the legislature does not intend to imply legislative approval or disapproval of any existing administrative policy regarding, or any existing administrative or judicial interpretation of, the provisions of this section not expressly added or revised.

(8) The development and use of a small irrigation impoundment, as defined in RCW 90.03.370(8), does not constitute a change or amendment for the purposes of this section. The exemption expressly provided by this subsection shall not be construed as requiring a change or transfer of any existing water right to enable the holder of the right to store water governed by the right.

(9) This section does not apply to a water right involved in an approved local water plan created under RCW 90.92.090, a water right that is subject to an agreement not to divert under RCW 90.92.050, or a banked water right under RCW 90.92.070. [2009 c 183 § 15; 2003 c 329 § 2; 2001 c 237 § 5; 1997 c 442 § 801; 1996 c 320 § 19; 1991 c 347 § 15; 1987 c 109 § 94; 1929 c 122 § 6; 1917 c 117 § 39; RRS § 7391. Formerly RCW 90.28.090.]

Expiration date—2009 c 183: See note following RCW 90.92.010.

Finding—Intent—Severability—Effective date—2001 c 237: See notes following RCW 90.82.040.

Intent—2001 c 237: See note following RCW 90.66.065.

Part headings not law—Severability—1997 c 442: See RCW 90.82.900 and 90.82.901.

Purposes—1991 c 347: See note following RCW 90.42.005.

Severability—1991 c 347: See RCW 90.42.900.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

Application to Yakima river basin trust water rights: RCW 90.38.040.

90.03.615 Calculating annual consumptive quantity. For purposes of calculating annual consumptive quantity as defined under RCW 90.03.380(1), if, within the most recent five-year period, the water right has been in the trust water rights program under chapter 90.38 or 90.42 RCW, or the nonuse of the water right has been excused from relinquishment under RCW 90.14.140, the department shall look to the most recent five-year period of continuous beneficial use preceding the date where the excuse for nonuse under RCW 90.14.140 was established and remained in effect. [2009 c 283 § 7.]

Findings—Intent—2009 c 283: See note following RCW 90.42.100.

90.03.620 Water rights adjudication—Disqualification of judge. (1) A judge in a water right adjudication filed under this chapter may be partially or fully disqualified from hearing the adjudication. Partial disqualification means disqualification from hearing specified claims. Full disqualification means disqualification from hearing any aspect of the adjudication.

(a) A judge is partially disqualified when the judge's impartiality might reasonably be questioned and the apparent or actual partiality is limited to specified claims.

(b) A judge is fully disqualified when the judge's impartiality might reasonably be questioned and the apparent or actual partiality extends beyond limited claims such that the judge should not hear any part of the adjudication.

(2) A judge may recuse himself or herself under this section or a party may file a motion for disqualification. A motion for disqualification must state whether the remedy being sought is full or partial disqualification.

(3)(a) For parties who are named in the original pleadings, a motion for disqualification is timely if it is filed before the judge issues a discretionary order or ruling in the adjudication.

(b) For a party who is joined in the adjudication after the original pleadings have been filed, a motion for disqualification is timely if it is filed within the earliest of either (i) thirty days of being joined in the adjudication; or (ii) after the joinder of the party, before the judge issues a discretionary order or ruling relating to the joined party.

(c) When a motion for disqualification is untimely filed under this subsection (3), the motion will be granted only when necessary to correct a substantial injustice.

(d) For purposes of this section, "discretionary order or ruling" has the same meaning as "order or ruling involving discretion" in RCW 4.12.050.

(4) A party filing a motion for disqualification under this section has the burden of proving by a preponderance of the evidence that the judge should be disqualified under the standards of subsection (1) of this section.

(5) The motion for disqualification may not be heard by the judge against whom the motion is filed. Subject to this limitation, the court may assign the disqualification motion to any superior court judge of the judicial district in which the adjudication was filed or to a visiting superior court judge under RCW 2.56.040.

(6) The standards set forth in RCW 2.28.030, which govern the disqualification of judicial officers generally, may be grounds for disqualification under this section. [2009 c 332 § 3.]

Application—2009 c 332: See note following RCW 90.03.110.

90.03.625 Water rights adjudication—Motion for default. Upon expiration of the filing period established under RCW 90.03.120(2), the department shall file a motion for default against defendants who have been served but who have failed to file an adjudication claim under RCW 90.03.140. A party in default may file a late claim under the same circumstances the party could respond or defend under court rules on default judgments. [2009 c 332 § 4.]

Application—2009 c 332: See note following RCW 90.03.110.

90.03.630 Water rights adjudication—Use for which a statement of claim is required. If an adjudication claim is for a use for which a statement of claim was required to be filed under chapter 90.14 RCW and no such claim was filed, the department may move that the adjudication claim be denied. The court shall grant the department's motion unless

the claimant shows good cause why the motion should not be granted. [2009 c 332 § 5.]

Application—2009 c 332: See note following RCW 90.03.110.

90.03.635 Water rights adjudication—Filing of evidence. Within the date set by the court for filing evidence, each claimant shall file with the court evidence to support the claimant's adjudication claims. The court is encouraged to set a date for filing evidence that is reasonable and fair for the timely processing of the adjudication. The evidence may include, without limitation, permits or certificates of water right, statements of claim made under chapter 90.14 RCW, deeds, documents related to issuance of a land patent, aerial photographs, decrees of previous water rights adjudications, crop records, records of livestock purchases and sales, records of power use, metering records, declarations containing testimonial evidence, records of diversion, withdrawal or storage and delivery by irrigation districts or ditch companies, and any other evidence to support that a water right was obtained and was not thereafter abandoned or relinquished. The evidence filed may include matters that are outside the original adjudication claim filed, and within the date set by the court for filing evidence, the claimant may amend the adjudication claim to conform to the evidence filed. Thereafter, except for good cause shown, a claimant may not file additional evidence to support the claim. [2009 c 332 § 8.]

Application—2009 c 332: See note following RCW 90.03.110.

90.03.640 Water rights adjudication—Preliminary investigation—Department's report of findings. (1) Upon the receipt of adjudication claims and the filing of claimants' evidence, the department shall conduct a preliminary investigation for the purpose of examining:

(a) The uses of the subject waters by and any physical works in connection with the persons to whom the adjudication applies; and

(b) The uses for which a statement of claim has been filed under chapter 90.14 RCW or for which the department has a permit or certificate of water right on record.

(2)(a) The examination may include, as the department deems appropriate:

(i) An estimation of the amount of water that is reasonably necessary to accomplish various beneficial uses within the area;

(ii) The measurement of stream flows;

(iii) The measurement of any diversion or withdrawal rates;

(iv) An estimation of storage capacity and the amount of water stored;

(v) The types and numbers of stock watered;

(vi) The number of residences served;

(vii) The location and size of any irrigated land areas; and

(viii) Any other information pertinent to the determination of water rights in an adjudication under this chapter.

(b) The department may also take other necessary steps and gather other data and information as may be essential to the proper understanding of the water uses and associated rights of the affected water users, including review of each claimant's adjudication claim and evidence the claimant filed to support the claim. The claimants and the department are encouraged to confer as may be beneficial to clarify the factual and legal basis for the claim. To the extent consistent with court rules, the court may deem it appropriate to encourage claimants and the department to work closely together to reach agreement on a claimed water right that may result in timely settlement of water rights, reduced costs for the parties, greater equity and general public service, and better information that may be used for overall water management.

(3) The department shall file with the court the department's report of findings as to each adjudication claim filed timely under RCW 90.03.140. The department may divide its report of findings into two or more segments, covering particular drainages, uses, or other appropriate bases for dividing the report on adjudication claims. Based on the evidence filed by claimants and the department's report of findings, the department shall file with the superior court either or both of the following motions:

(a) A motion for a partial decree in favor of all stated claims under RCW 90.03.140 that the department finds to be substantiated with factual evidence; or

(b) A motion seeking determination of contested claims before the court. [2009 c 332 § 9.]

Application—2009 c 332: See note following RCW 90.03.110.

90.03.645 Water rights adjudication—Early settlement encouraged—Approval of settlement. (1) The legislature finds that early settlement of contested claims is needed for a fair and efficient adjudication of water rights. Therefore, the department and other parties should identify opportunities for settlement following the date set by the court for filing evidence for all parties. To the extent consistent with court rules, the court as it deems beneficial is encouraged to urge as many parties to the adjudication as possible to reach timely agreement on claimed water rights in a manner that limits costs to the public, claimants, counties, courts, and the department. Further, at appropriate times throughout the process the court as it deems beneficial is encouraged to direct parties to utilize alternative methods of dispute resolution, including informal meetings, negotiation, mediation, or other methods to reach agreement on disputed claims.

(2) Any time after the filing of all claims under RCW 90.03.140, the department or another party may move the superior court to allow parties to meet for settlement discussions for a set length of time, either before an appointed mediator or without a mediator. For good cause shown, the court may extend the length of time for settlement discussions. The costs of mediation must be equitably borne by the parties to the mediation.

(3) If the department and a claimant reach agreement on settlement, the department shall file a motion to approve the settlement pursuant to RCW 90.03.640(3)(a) and shall disclose the terms of the settlement to other parties to the adjudication. The court shall conduct a hearing prior to approving a settlement and any party to the adjudication may object or offer modifications to the settlement. [2009 c 332 § 11.]

Application—2009 c 332: See note following RCW 90.03.110.

Chapter 90.14 RCW

WATER RIGHTS—REGISTRATION—WAIVER AND RELINQUISHMENT, ETC.

Sections

90.14.140 "Sufficient cause" for nonuse defined—Rights exempted. *(Effective until June 30, 2019.)*

90.14.140 "Sufficient cause" for nonuse defined—Rights exempted. ***(Effective until June 30, 2019.)*** (1) For the purposes of RCW 90.14.130 through 90.14.180, "sufficient cause" shall be defined as the nonuse of all or a portion of the water by the owner of a water right for a period of five or more consecutive years where such nonuse occurs as a result of:

(a) Drought, or other unavailability of water;

(b) Active service in the armed forces of the United States during military crisis;

(c) Nonvoluntary service in the armed forces of the United States;

(d) The operation of legal proceedings;

(e) Federal or state agency leases of or options to purchase lands or water rights which preclude or reduce the use of the right by the owner of the water right;

(f) Federal laws imposing land or water use restrictions either directly or through the voluntary enrollment of a landowner in a federal program implementing those laws, or acreage limitations, or production quotas;

(g) Temporarily reduced water need for irrigation use where such reduction is due to varying weather conditions, including but not limited to precipitation and temperature, that warranted the reduction in water use, so long as the water user's diversion and delivery facilities are maintained in good operating condition consistent with beneficial use of the full amount of the water right;

(h) Temporarily reduced diversions or withdrawals of irrigation water directly resulting from the provisions of a contract or similar agreement in which a supplier of electricity buys back electricity from the water right holder and the electricity is needed for the diversion or withdrawal or for the use of the water diverted or withdrawn for irrigation purposes;

(i) Water conservation measures implemented under the Yakima river basin water enhancement project, so long as the conserved water is reallocated in accordance with the provisions of P.L. 103-434;

(j) Reliance by an irrigation water user on the transitory presence of return flows in lieu of diversion or withdrawal of water from the primary source of supply, if such return flows are measured or reliably estimated using a scientific methodology generally accepted as reliable within the scientific community; or

(k) The reduced use of irrigation water resulting from crop rotation. For purposes of this subsection, crop rotation means the temporary change in the type of crops grown resulting from the exercise of generally recognized sound farming practices. Unused water resulting from crop rotation will not be relinquished if the remaining portion of the water continues to be beneficially used.

(2) Notwithstanding any other provisions of RCW 90.14.130 through 90.14.180, there shall be no relinquishment of any water right:

(a) If such right is claimed for power development purposes under chapter 90.16 RCW and annual license fees are paid in accordance with chapter 90.16 RCW;

(b) If such right is used for a standby or reserve water supply to be used in time of drought or other low flow period so long as withdrawal or diversion facilities are maintained in good operating condition for the use of such reserve or standby water supply;

(c) If such right is claimed for a determined future development to take place either within fifteen years of July 1, 1967, or the most recent beneficial use of the water right, whichever date is later;

(d) If such right is claimed for municipal water supply purposes under chapter 90.03 RCW;

(e) If such waters are not subject to appropriation under the applicable provisions of RCW 90.40.030;

(f) If such right or portion of the right is leased to another person for use on land other than the land to which the right is appurtenant as long as the lessee makes beneficial use of the right in accordance with this chapter and a transfer or change of the right has been approved by the department in accordance with RCW 90.03.380, 90.03.383, 90.03.390, or 90.44.100;

(g) If such a right or portion of the right is authorized for a purpose that is satisfied by the use of agricultural industrial process water as authorized under RCW 90.46.150;

(h) If such right is a trust water right under chapter 90.38 or 90.42 RCW;

(i) If such a right is involved in an approved local water plan created under RCW 90.92.090, provided the right is subject to an agreement not to divert under RCW 90.92.050, or provided the right is banked under RCW 90.92.070.

(3) In adding provisions to this section by chapter 237, Laws of 2001, the legislature does not intend to imply legislative approval or disapproval of any existing administrative policy regarding, or any existing administrative or judicial interpretation of, the provisions of this section not expressly added or revised. [2009 c 183 § 14. Prior: 2001 c 240 § 1; 2001 c 237 § 27; 2001 c 69 § 5; 1998 c 258 § 1; 1987 c 125 § 1; 1967 c 233 § 14.]

Expiration date—2009 c 183: See note following RCW 90.92.010.

Effective date—2001 c 240: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 11, 2001]." [2001 c 240 § 2.]

Finding—Intent—Severability—Effective date—2001 c 237: See notes following RCW 90.82.040.

Intent—2001 c 237: See note following RCW 90.66.065.

Effective date—1967 c 233: See RCW 90.14.900.

Application to Yakima river basin trust water rights: RCW 90.38.040.

Chapter 90.42 RCW

WATER RESOURCE MANAGEMENT

Sections

90.42.020 Definitions.
90.42.040 Trust water rights program—Water right certificate—Notice of creation or modification.

90.42.080 Trust water rights—Acquisition, donation, exercise, and transfer—Appropriation required for expenditure of funds.
90.42.100 Water banking.
90.42.150 Recovery of department's costs associated with water service contracts with federal agencies.
90.42.160 Adoption of rules.

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

(1) "Department" means the department of ecology.

(2) "Local government" means a city, town, public utility district, irrigation district, public port, county, sewer district, or water district.

(3) "Net water savings" means the amount of water that is determined to be conserved and usable within a specified stream reach or reaches for other purposes without impairment or detriment to water rights existing at the time that a water conservation project is undertaken, reducing the ability to deliver water, or reducing the supply of water that otherwise would have been available to other existing water uses.

(4) "Pilot planning areas" means the geographic areas designated under RCW 90.54.045(2).

(5) "Trust water right" means any water right acquired by the state under this chapter for management in the state's trust water rights program.

(6) "Water conservation project" means any project or program that achieves physical or operational improvements that provide for increased water use efficiency in existing systems of diversion, conveyance, application, or use of water under water rights existing on July 28, 1991. [2009 c 283 § 3; 1991 c 347 § 6.]

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

Findings—Intent—2009 c 283: See note following RCW 90.42.100.

Purposes—1991 c 347: See note following RCW 90.42.005.

90.42.040 Trust water rights program—Water right certificate—Notice of creation or modification. (1) A trust water right acquired by the state shall be placed in the state trust water rights program to be managed by the department. The department shall exercise its authorities under the law in a manner that protects trust water rights. Trust water rights acquired by the state shall be held in trust and authorized for use by the department for instream flows, irrigation, municipal, or other beneficial uses consistent with applicable regional plans for pilot planning areas, or to resolve critical water supply problems. The state may acquire a groundwater right to be placed in the state trust water rights program. To the extent practicable and subject to legislative appropriation, trust water rights acquired in an area with an approved watershed plan developed under chapter 90.82 RCW shall be consistent with that plan if the plan calls for such acquisition.

(2) The department shall issue a water right certificate in the name of the state of Washington for each permanent trust water right conveyed to the state indicating the quantity of water transferred to trust, the reach or reaches of the stream or the body of public groundwater that constitutes the place of use of the trust water right, and the use or uses to which it may be applied. A superseding certificate shall be issued that specifies the amount of water the water right holder would continue to be entitled to as a result of the water conservation project. The superseding certificate shall retain the same priority date as the original right. For nonpermanent conveyances, the department shall issue certificates or such other instruments as are necessary to reflect the changes in purpose or place of use or point of diversion or withdrawal.

(3) A trust water right retains the same priority date as the water right from which it originated, but as between the two rights, the trust right shall be deemed to be inferior in priority unless otherwise specified by an agreement between the state and the party holding the original right.

(4)(a) Exercise of a trust water right may be authorized only if the department first determines that neither water rights existing at the time the trust water right is established, nor the public interest will be impaired.

(b) If impairment becomes apparent during the time a trust water right is being exercised, the department shall cease or modify the use of the trust water right to eliminate the impairment.

(c) A trust water right acquired by the state and held or authorized for beneficial use by the department is considered to be exercised as long as it is in the trust water rights program.

(d) For the purposes of RCW 90.03.380(1) and 90.42.080(9), the consumptive quantity of a trust water right acquired by the state and held or authorized for use by the department is equal to the consumptive quantity of the right prior to transfer into the trust water rights program.

(5)(a) Before any trust water right is created or modified, the department shall, at a minimum, require that a notice be published in a newspaper of general circulation published in the county or counties in which the storage, diversion, and use are to be made, and in other newspapers as the department determines is necessary, once a week for two consecutive weeks.

(b) At the same time the department shall send a notice containing pertinent information to all appropriate state agencies, potentially affected local governments and federally recognized tribal governments, and other interested parties.

(c) For a trust water right donation described in RCW 90.42.080(1)(b), or for a trust water right lease described in RCW 90.42.080(8) that does not exceed five years, the department may post equivalent information on its web site to meet the notice requirements in (a) of this subsection and may send pertinent information by e-mail to meet the notice requirements in (b) of this subsection.

(6) RCW 90.14.140 through 90.14.230 have no applicability to trust water rights held by the department under this chapter or exercised under this section.

(7) RCW 90.03.380 has no applicability to trust water rights acquired by the state through the funding of water conservation projects.

(8) Subsection (4)(a) of this section does not apply to a trust water right resulting from a donation for instream flows described in RCW 90.42.080(1)(b) or to a trust water right leased under RCW 90.42.080(8) if the period of the lease does not exceed five years.

(9) Where a portion of an existing water right that is acquired or donated to the trust water rights program will assist in achieving established instream flows, the department shall process the change or amendment of the existing right without conducting a review of the extent and validity of the

portion of the water right that will remain with the water right holder. [2009 c 283 § 4; 2002 c 329 § 8; 2001 c 237 § 30; 1993 c 98 § 3; 1991 c 347 § 8.]

Findings—Intent—2009 c 283: See note following RCW 90.42.100.

Finding—Intent—Severability—Effective date—2001 c 237: See notes following RCW 90.82.040.

Intent—2001 c 237: See note following RCW 90.66.065.

Purposes—1991 c 347: See note following RCW 90.42.005.

90.42.080 Trust water rights—Acquisition, donation, exercise, and transfer—Appropriation required for expenditure of funds. (1)(a) The state may acquire all or portions of existing surface water or groundwater rights, by purchase, gift, or other appropriate means other than by condemnation, from any person or entity or combination of persons or entities. Once acquired, such rights are trust water rights. A water right acquired by the state that is expressly conditioned to limit its use to instream purposes shall be administered as a trust water right in compliance with that condition.

(b) If the holder of a right to surface water or groundwater chooses to donate all or a portion of the person's water right to the trust water system to assist in providing instream flows or to preserve surface water or groundwater resources on a temporary or permanent basis, the department shall accept the donation on such terms as the person may prescribe as long as the donation satisfies the requirements of subsection (4) of this section and the other applicable requirements of this chapter and the terms prescribed are relevant and material to protecting any interest in the water right retained by the donor. Once accepted, such rights are trust water rights within the conditions prescribed by the donor.

(2) The department may enter into leases, contracts, or such other arrangements with other persons or entities as appropriate, to ensure that trust water rights acquired in accordance with this chapter may be exercised to the fullest possible extent.

(3) Trust water rights may be acquired by the state on a temporary or permanent basis.

(4) Except as provided in subsections (10) and (11) of this section, a water right donated under subsection (1)(b) of this section shall not exceed the extent to which the water right was exercised during the five years before the donation nor may the total of any portion of the water right remaining with the donor plus the donated portion of the water right exceed the extent to which the water right was exercised during the five years before the donation. A water right holder who believes his or her water right has been impaired by a trust water right donated under subsection (1)(b) of this section may request that the department review the impairment claim. If the department determines that a trust water right resulting from a donation under subsection (1)(b) of this section is impairing existing water rights in violation of RCW 90.42.070, the trust water right shall be altered by the department to eliminate the impairment. Any decision of the department to alter or not to alter a trust water right donated under subsection (1)(b) of this section is appealable to the pollution control hearings board under RCW 43.21B.230. A donated water right's status as a trust water right under this subsection is not evidence of the validity or quantity of the water right.

(5) The provisions of RCW 90.03.380 and 90.03.390 do not apply to donations for instream flows described in subsection (1)(b) of this section, but do apply to other transfers of water rights under this section except that the consumptive quantity of a trust water right acquired by the state and held or authorized for use by the department is equal to the consumptive quantity of the right prior to transfer into the trust water rights program.

(6) No funds may be expended for the purchase of water rights by the state pursuant to this section unless specifically appropriated for this purpose by the legislature.

(7) Any water right conveyed to the trust water right system as a gift that is expressly conditioned to limit its use to instream purposes shall be managed by the department for public purposes to ensure that it qualifies as a gift that is deductible for federal income taxation purposes for the person or entity conveying the water right.

(8) Except as provided in subsections (10) and (11) of this section, if the department acquires a trust water right by lease, the amount of the trust water right shall not exceed the extent to which the water right was exercised during the five years before the acquisition was made nor may the total of any portion of the water right remaining with the original water right holder plus the portion of the water right leased by the department exceed the extent to which the water right was exercised during the five years before the acquisition. A water right holder who believes his or her water right has been impaired by a trust water right leased under this subsection may request that the department review the impairment claim. If the department determines that a trust water right resulting from the leasing of that trust water right leased under this subsection is impairing existing water rights in violation of RCW 90.42.070, the trust water right shall be altered by the department to eliminate the impairment. Any decision of the department to alter or not to alter a trust water right leased under this subsection is appealable to the pollution control hearings board under RCW 43.21B.230. The department's leasing of a trust water right under this subsection is not evidence of the validity or quantity of the water right.

(9) For a water right donated to or acquired by the trust water rights program on a temporary basis, the full quantity of water diverted or withdrawn to exercise the right before the donation or acquisition shall be placed in the trust water rights program and shall revert to the donor or person from whom it was acquired when the trust period ends. For a trust water right acquired by the state and held or authorized for use by the department, the consumptive quantity of the right when it reverts to the donor or person from whom it was acquired is equal to the consumptive quantity of the right prior to transfer into the trust water rights program.

(10) For water rights donated or leased under subsection (4) or (8) of this section where nonuse of the water right is excused under RCW 90.14.140(1):

(a) The department shall calculate the amount of water eligible to be acquired by looking at the extent to which the right was exercised during the most recent five-year period preceding the date where nonuse of the water right was excused under RCW 90.14.140(1); and

(b) The total of the donated or leased portion of the water right and the portion of the water right remaining with the water right holder shall not exceed the extent to which the water right was exercised during the most recent five-year period preceding the date nonuse of the water right was excused under RCW 90.14.140(1).

(11) For water rights donated or leased under subsection (4) or (8) of this section where nonuse of the water right is exempt under RCW 90.14.140(2) (a) or (d):

(a) The amount of water eligible to be acquired shall be based on historical beneficial use; and

(b) The total of the donated or leased portion of the water right and the portion of the water right the water right holder continues to use shall not exceed the historical beneficial use of that right during the duration of the trust. [2009 c 283 § 5; 2002 c 329 § 9; 2001 c 237 § 31; 1993 c 98 § 4; 1991 c 347 § 12.]

Findings—Intent—2009 c 283: See note following RCW 90.42.100.

Finding—Intent—Severability—Effective date—2001 c 237: See notes following RCW 90.82.040.

Intent—2001 c 237: See note following RCW 90.66.065.

Purposes—1991 c 347: See note following RCW 90.42.005.

90.42.100 Water banking. (1) The department is hereby authorized to use the trust water rights program for water banking purposes statewide.

(2) Water banking may be used for one or more of the following purposes:

(a) To authorize the use of trust water rights to mitigate for water resource impacts, future water supply needs, or any beneficial use under chapter 90.03, 90.44, or 90.54 RCW, consistent with any terms and conditions established by the transferor, except that within the Yakima river basin return flows from water rights authorized in whole or in part for any purpose shall remain available as part of the Yakima basin's total water supply available and to satisfy existing rights for other downstream uses and users;

(b) To document transfers of water rights to and from the trust water rights program; and

(c) To provide a source of water rights the department can make available to third parties on a temporary or permanent basis for any beneficial use under chapter 90.03, 90.44, or 90.54 RCW.

(3) The department shall not use water banking to:

(a) Cause detriment or injury to existing rights;

(b) Issue temporary water rights or portions thereof for new potable uses requiring an adequate and reliable water supply under RCW 19.27.097;

(c) Administer federal project water rights, including federal storage rights; or

(d) Allow carryover of stored water in the Yakima basin from one water year to another water year if it would negatively impact the total water supply available.

(4) The department shall provide electronic notice and opportunity for comment to affected local governments and affected federally recognized tribal governments prior to initiating use of the trust water rights program for water banking purposes for the first time in each water resource inventory area.

(5) Nothing in this section may be interpreted or administered in a manner that precludes the use of the department's existing authority to process trust water rights applications under this chapter or to process water right applications under chapter 90.03 or 90.44 RCW.

(6) For purposes of this section and RCW 90.42.135, "total water supply available" shall be defined as provided in the 1945 consent decree between the United States and water users in the Yakima river basin, and consistent with later interpretation by state and federal courts. [2009 c 283 § 2; 2003 c 144 § 2.]

Findings—Intent—2009 c 283: "The legislature finds that many watershed groups and programs, including but not limited to watershed planning units operating under chapter 90.82 RCW, have proposed or considered using the state trust water rights program for water banking purposes to meet vital instream and out-of-stream needs within a watershed or region. The legislature also finds that water banking can: Provide critical tools to make water supplies available when and where needed during times of drought; improve stream flows and preserve instream values during fish critical periods; reduce water transaction costs, time, and risk to purchasers; facilitate fair and efficient reallocation of water from one beneficial use to another; provide water supplies to offset impacts related to future development and the issuance of new water rights; and facilitate water agreements that protect upstream community values while retaining flexibility to meet critical downstream water needs in times of scarcity. The legislature therefore declares that the intent of this act is to provide clear authority for water banking throughout the state and to improve the effectiveness of the state trust water rights program." [2009 c 283 § 1.]

Effective date—2003 c 144: See note following RCW 90.42.005.

90.42.150 Recovery of department's costs associated with water service contracts with federal agencies. Costs incurred by the department associated with water service contracts with federal agencies may be recovered by the department from persons withdrawing water or credits for water associated with water banking purposes as a condition of the exercise of a water right supplied from a federal water project. [2009 c 283 § 6.]

Findings—Intent—2009 c 283: See note following RCW 90.42.100.

90.42.160 Adoption of rules. The department may adopt rules as necessary to implement this chapter. [2009 c 283 § 8.]

Findings—Intent—2009 c 283: See note following RCW 90.42.100.

Chapter 90.44 RCW
REGULATION OF PUBLIC GROUNDWATERS

Sections

90.44.100 Amendment to permit or certificate—Replacement or new additional wells—Exemption for small irrigation impoundments. *(Effective until June 30, 2019.)*
90.44.220 Petition to conduct an adjudication to determine rights to water.

90.44.100 Amendment to permit or certificate—Replacement or new additional wells—Exemption for small irrigation impoundments. ***(Effective until June 30, 2019.)*** (1) After an application to, and upon the issuance by the department of an amendment to the appropriate permit or certificate of groundwater right, the holder of a valid right to withdraw public groundwaters may, without losing the holder's priority of right, construct wells or other means of withdrawal at a new location in substitution for or in addition

to those at the original location, or the holder may change the manner or the place of use of the water.

(2) An amendment to construct replacement or a new additional well or wells at a location outside of the location of the original well or wells or to change the manner or place of use of the water shall be issued only after publication of notice of the application and findings as prescribed in the case of an original application. Such amendment shall be issued by the department only on the conditions that: (a) The additional or replacement well or wells shall tap the same body of public groundwater as the original well or wells; (b) where a replacement well or wells is approved, the use of the original well or wells shall be discontinued and the original well or wells shall be properly decommissioned as required under chapter 18.104 RCW; (c) where an additional well or wells is constructed, the original well or wells may continue to be used, but the combined total withdrawal from the original and additional well or wells shall not enlarge the right conveyed by the original permit or certificate; and (d) other existing rights shall not be impaired. The department may specify an approved manner of construction and shall require a showing of compliance with the terms of the amendment, as provided in RCW 90.44.080 in the case of an original permit.

(3) The construction of a replacement or new additional well or wells at the location of the original well or wells shall be allowed without application to the department for an amendment. However, the following apply to such a replacement or new additional well: (a) The well shall tap the same body of public groundwater as the original well or wells; (b) if a replacement well is constructed, the use of the original well or wells shall be discontinued and the original well or wells shall be properly decommissioned as required under chapter 18.104 RCW; (c) if a new additional well is constructed, the original well or wells may continue to be used, but the combined total withdrawal from the original and additional well or wells shall not enlarge the right conveyed by the original water use permit or certificate; (d) the construction and use of the well shall not interfere with or impair water rights with an earlier date of priority than the water right or rights for the original well or wells; (e) the replacement or additional well shall be located no closer than the original well to a well it might interfere with; (f) the department may specify an approved manner of construction of the well; and (g) the department shall require a showing of compliance with the conditions of this subsection (3).

(4) As used in this section, the "location of the original well or wells" is the area described as the point of withdrawal in the original public notice published for the application for the water right for the well.

(5) The development and use of a small irrigation impoundment, as defined in RCW 90.03.370(8), does not constitute a change or amendment for the purposes of this section. The exemption expressly provided by this subsection shall not be construed as requiring an amendment of any existing water right to enable the holder of the right to store water governed by the right.

(6) This section does not apply to a water right involved in an approved local water plan created under RCW 90.92.090 or a banked water right under RCW 90.92.070. [2009 c 183 § 16; 2003 c 329 § 3; 1997 c 316 § 2; 1987 c 109 § 113; 1945 c 263 § 10; Rem. Supp. 1945 § 7400-10.]

Expiration date—2009 c 183: See note following RCW 90.92.010.

Intent—1997 c 316: "The legislature intends that the holder of a valid permit or certificate of groundwater right be permitted by the department of ecology to amend a valid permit or certificate to allow full and complete development of the valid right by the construction of replacement or additional wells at the original location or new locations." [1997 c 316 § 1.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

90.44.220 Petition to conduct an adjudication to determine rights to water. Upon the filing of a petition with the department by a planning unit or by one or more persons claiming a right to any waters within the state or when, after investigation, in the judgment of the department, the public interest will be served by a determination of the rights thereto, the department shall file a petition to conduct an adjudication with the superior court of the county for the determination of the rights of appropriators of any particular groundwater body and all the provisions of RCW 90.03.110 through 90.03.240 and 90.03.620 through 90.03.645, shall govern and apply to the adjudication and determination of such groundwater body and to the ownership thereof. Hereafter, in any proceedings for the adjudication and determination of water rights—either rights to the use of surface water or to the use of groundwater, or both—pursuant to chapter 90.03 RCW, all appropriators of groundwater or of surface water in the particular basin or area may be included as parties to such adjudication, as set forth in chapter 90.03 RCW. [2009 c 332 § 17; 1987 c 109 § 119; 1945 c 263 § 17; Rem. Supp. 1945 § 7400-17.]

Application—2009 c 332: See note following RCW 90.03.110.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

Additional powers and duties enumerated—Payment from reclamation account: RCW 89.16.055.

Application of RCW sections to specific proceedings: RCW 90.14.200.

Determination of water rights
scope: RCW 90.03.245.
state to bear its expenses incurred in and on appeal: RCW 90.03.243.

Chapter 90.46 RCW
RECLAIMED WATER USE

Sections

90.46.010 Definitions.
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90.46.120 Use of water from wastewater treatment facility—Consideration in regional water supply plan or potable water supply plans—Consideration in reviewing provisions for water supplies for short plat, short subdivision, or subdivision—Report to the legislature.
90.46.200 Authority of the departments of ecology and health—Lead agency—Duties.
90.46.210 Lead agency—Authority to bring legal proceeding.
90.46.220 Permit.
90.46.230 Right to enter and inspect property related to the purpose of the permit—Administrative search warrant.
90.46.240 Plans, reports, specifications, and proposed methods of operation and maintenance to be submitted to departments.
90.46.250 Violation of chapter—Notification—Immediate action.

90.46.260 Penalty.
90.46.270 Violations—Civil penalty—Procedure.
90.46.280 Application of administrative procedure act to chapter.

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

(1) "Agricultural industrial process water" means water that has been used for the purpose of agricultural processing and has been adequately and reliably treated, so that as a result of that treatment, it is suitable for other agricultural water use.

(2) "Agricultural processing" means the processing of crops or milk to produce a product primarily for wholesale or retail sale for human or animal consumption, including but not limited to potato, fruit, vegetable, and grain processing.

(3) "Agricultural water use" means the use of water for irrigation and other uses related to the production of agricultural products. These uses include, but are not limited to, construction, operation, and maintenance of agricultural facilities and livestock operations at farms, ranches, dairies, and nurseries. Examples of these uses include, but are not limited to, dust control, temperature control, and fire control.

(4) "Constructed beneficial use wetlands" means those wetlands intentionally constructed on nonwetland sites to produce or create natural wetland functions and values.

(5) "Constructed treatment wetlands" means wetland-like impoundments intentionally constructed on nonwetland sites and managed for the primary purpose of further treatment or retention of reclaimed water as distinct from creating natural wetland functions and values.

(6) "Direct groundwater recharge" means the controlled subsurface addition of water directly into groundwater for the purpose of replenishing groundwater.

(7) "Domestic wastewater" means wastewater from greywater, toilet, or urinal sources.

(8) "Greywater or gray water" means domestic type flows from bathtubs, showers, bathroom sinks, washing machines, dishwashers, and kitchen or utility sinks. Gray water does not include flow from a toilet or urinal.

(9) "Industrial reuse water" means water that has been used for the purpose of industrial processing and has been adequately and reliably treated so that, as a result of that treatment, it is suitable for other uses.

(10) "Land application" means use of reclaimed water as permitted under this chapter for the purpose of irrigation or watering of landscape vegetation.

(11) "Lead agency" means either the department of health or the department of ecology that has been designated by rule as the agency that will coordinate, review, issue, and enforce a reclaimed water permit issued under this chapter.

(12) "Nonlead agency" means either the department of health or the department of ecology, whichever is not the lead agency for purposes of this chapter.

(13) "Person" means any state, individual, public or private corporation, political subdivision, governmental subdivision, governmental agency, municipality, copartnership, association, firm, trust estate, or any other legal entity whatever.

(14) "Planned groundwater recharge project" means any reclaimed water project designed for the purpose of recharging groundwater.

(15) "Reclaimed water" means water derived in any part from wastewater with a domestic wastewater component that has been adequately and reliably treated, so that it can be used for beneficial purposes. Reclaimed water is not considered a wastewater.

(16) "State drinking water contaminant criteria" means the contaminant criteria found in the drinking water quality standards adopted by the state board of health pursuant to chapter 43.20 RCW and the department of health pursuant to chapter 70.119A RCW.

(17) "Streamflow or surface water augmentation" means the intentional use of reclaimed water for rivers and streams of the state or other surface water bodies, for the purpose of increasing volumes.

(18) "Surface percolation" means the controlled application of water to the ground surface or to unsaturated soil for the purpose of replenishing groundwater.

(19) "User" means any person who uses reclaimed water.

(20) "Wastewater" means water-carried wastes from residences, buildings, industrial and commercial establishments, or other places, together with such groundwater infiltration and inflow as may be present.

(21) "Wetland or wetlands" means areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted to life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands regulated under this chapter shall be delineated in accordance with the manual adopted by the department of ecology pursuant to RCW 90.58.380. [2009 c 456 § 1; 2006 c 279 § 4; 2002 c 329 § 3; 2001 c 69 § 2; 1997 c 444 § 5; 1995 c 342 § 2; 1992 c 204 § 2.]

Alphabetization—2009 c 456: "The code reviser shall alphabetize and renumber the definitions in RCW 90.46.010." [2009 c 456 § 19.]

Alphabetization—2006 c 279: "The code reviser shall alphabetize and renumber the definitions in RCW 90.46.010." [2006 c 279 § 12.]

Severability—1997 c 444: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1997 c 444 § 11.]

Construction—Effective date—1995 c 342: See notes following RCW 90.46.005.

90.46.015 Rules—Coordination with department of health—Consultation with advisory committee. (1) The department of ecology shall, in coordination with the department of health, adopt rules for reclaimed water use consistent with this chapter. The rules must address all aspects of reclaimed water use, including commercial and industrial uses, land applications, direct groundwater recharge, wetland discharge, surface percolation, constructed wetlands, and streamflow or surface water augmentation. The department of health shall, in coordination with the department of ecology, adopt rules for greywater reuse. The rules must also designate whether the department of ecology or the department of health will be the lead agency responsible for a particular aspect of reclaimed water use. In developing the rules,

the departments of health and ecology shall amend or rescind any existing rules on reclaimed water in conflict with the new rules.

(2) All rules required to be adopted pursuant to this section must be completed no later than December 31, 2010, although the department of ecology is encouraged to adopt the final rules as soon as possible.

(3) The department of ecology must consult with the advisory committee created under RCW 90.46.050 in all aspects of rule development required under this section. [2009 c 456 § 2; 2006 c 279 § 1.]

Interim reports—2006 c 279: "(1) In order to identify and pursue other measures to facilitate achieving the objectives in RCW 90.46.005 for expanded, appropriate, and safe use of reclaimed water, the department of ecology and the department of health shall provide the legislature with relevant information through periodic progress reports, as provided in this section.

(2) The department of ecology shall provide interim reports to the appropriate committees of the legislature by January 1, 2008, and January 1, 2009, that summarize the steps taken to that date towards the final rule making required by RCW 90.46.015. The reports shall include, at a minimum, a summary of participation in the rule advisory committee, the topics considered by the department, and issues identified by the rule advisory committee as barriers to expanded use of reclaimed water that may not be addressed within the rules to be adopted by the department.

(3) In addition to subsection (2) of this section, the department shall form a subtask force consisting of not more than ten members chosen from the existing rule advisory committee, and reclaimed water users, to further identify and recommend actions to increase the promotion of reclaimed water as a water supply and water resource management option. At a minimum, the subtask force shall consider (a) issues assigned by the rule advisory committee; (b) staffing levels, resources, and roles within both state agencies; (c) optimizing organizational structure; (d) unresolved legal issues specific to reclaimed water use; and (e) a more appropriate name to describe reclaimed water. Information regarding these topics shall be appended to the required interim reports as the topics are considered by the advisory group." [2007 c 445 § 5; 2006 c 279 § 3.]

90.46.040 Standards, procedures, and guidelines for land applications of reclaimed water. (1) The department of ecology shall, in coordination with the department of health, adopt a single set of standards, procedures, and guidelines, on or before August 1, 1993, for land applications of reclaimed water.

(2) Standards adopted under this section are superseded by any rules adopted by the department of ecology pursuant to RCW 90.46.015 as they relate to the land application of reclaimed water. [2009 c 456 § 3; 2006 c 279 § 6; 2005 c 59 § 2; 1992 c 204 § 5.]

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

90.46.080 Use of reclaimed water for surface percolation—Establishment of discharge limit for contaminants. (1) Except as otherwise provided in this section, reclaimed water may be beneficially used for surface percolation provided the reclaimed water meets the state drinking water contaminant criteria as measured in groundwater beneath or down gradient of the recharge project site, and has been incorporated into a sewer or water comprehensive plan, as applicable, adopted by the applicable local government and approved by the department of health or department of ecology as applicable.

(2) If the state drinking water contaminant criteria do not contain a standard for a constituent or contaminant, the department of ecology shall establish a discharge limit consistent with the goals of this chapter, except as otherwise provided in this section.

(3) Except as otherwise provided in this section, reclaimed water that does not meet the state drinking water contaminant criteria may be beneficially used for surface percolation where the department of ecology, in consultation with the department of health, has specifically authorized such use at such lower standard.

(4) The provisions of this section are superseded by any rules adopted by the department of ecology pursuant to RCW 90.46.015 as they relate to surface percolation. [2009 c 456 § 4; 2006 c 279 § 9; 1997 c 444 § 6; 1995 c 342 § 3.]

Severability—1997 c 444: See note following RCW 90.46.010.

Construction—Effective date—1995 c 342: See notes following RCW 90.46.005.

90.46.120 Use of water from wastewater treatment facility—Consideration in regional water supply plan or potable water supply plans—Consideration in reviewing provisions for water supplies for short plat, short subdivision, or subdivision—Report to the legislature. (1) The owner of a wastewater treatment facility that is reclaiming water with a permit issued under this chapter has the exclusive right to any reclaimed water generated by the wastewater treatment facility. Use, distribution, storage, and the recovery from storage of reclaimed water permitted under this chapter is exempt from the permit requirements of RCW 90.03.250 and 90.44.060, provided that a permit for recovery of reclaimed water from aquifer storage shall be reviewed under the standards established under RCW 90.03.370(2) for aquifer storage and recovery projects. Revenues derived from the reclaimed water facility shall be used only to offset the cost of operation of the wastewater utility fund or other applicable source of systemwide funding.

(2) If the proposed use of reclaimed water is to augment or replace potable water supplies or to create the potential for the development of an additional new potable water supply, then regional water supply plans, or any other potable water supply plans prepared by multiple water purveyors, must consider the proposed use of the reclaimed water as they are developed or updated.

(a) Regional water supply plans include those adopted under state board of health laws (chapter 43.20 RCW), the public water system coordination act of 1977 (chapter 70.116 RCW), groundwater protection laws (chapter 90.44 RCW), and the watershed planning act (chapter 90.82 RCW).

(b) The requirement to consider the use of reclaimed water does not change the plan approval process established under these statutes.

(c) When regional water supply plans are being developed, the owners of wastewater treatment facilities that produce or propose to produce reclaimed water for use within the planning area must be included in the planning process.

(3) When reclaimed water is available or is proposed for use under a water supply or wastewater plan developed under chapter 43.20, 70.116, 90.44, 90.48, or 90.82 RCW these plans must be coordinated to ensure that opportunities for reclaimed water are evaluated. The requirements of this sub-

section (3) do not apply to water system plans developed under chapter 43.20 RCW for utilities serving less than one thousand service connections.

(4) The provisions of any plan for reclaimed water, developed under the authorities in subsections (2) and (3) of this section, should be included by a city, town, or county in reviewing provisions for water supplies in a proposed short plat, short subdivision, or subdivision under chapter 58.17 RCW, where reclaimed water supplies may be proposed for nonpotable purposes in the short plat, short subdivision, or subdivision.

(5) By November 30, 2009, the department of ecology shall review comments from the reclaimed water advisory committee under RCW 90.46.050 and the reclaimed water and water rights advisory committee under the direction of the department of ecology and submit a recommendation to the legislature on the impairment requirements and standards for reclaimed water. The department of ecology shall also provide a report to the legislature that describes the opinions of the stakeholders on the impairment requirements and standards for reclaimed water. [2009 c 456 § 5; 2007 c 445 § 3; 2003 1st sp.s. c 5 § 13; 1997 c 444 § 1.]

Findings—Intent—2007 c 445: See note following RCW 90.46.005.

Severability—2003 1st sp.s. c 5: See note following RCW 90.03.015.

Severability—1997 c 444: See note following RCW 90.46.010.

90.46.200 Authority of the departments of ecology and health—Lead agency—Duties. (1) The department of ecology and the department of health shall have authority to carry out all the provisions of this chapter including, but not limited to, permitting and enforcement. Only the department of ecology or the department of health may act as a lead agency for purposes of this chapter and will be established as such by rule. Enforcement of a permit issued under this chapter shall be at the sole discretion of the lead agency that issued the permit.

(2) All permit applications shall be referred to the nonlead agency for review and consultation. The nonlead agency may choose to limit the scope of its review.

(3) The authority and duties created in this chapter are in addition to any authority and duties already provided in law. Nothing in this chapter limits the powers of the state or any political subdivision to exercise such authority. [2009 c 456 § 7.]

90.46.210 Lead agency—Authority to bring legal proceeding. The lead agency, with the assistance of the attorney general, is authorized to bring any appropriate action at law or in equity, including action for injunctive relief, as may be necessary to carry out the provisions of this chapter. The lead agency may bring the action in the superior court of the county in which the violation occurred or in the superior court of Thurston county. The court may award reasonable attorneys' fees for the cost of the attorney general's office in representing the lead agency. [2009 c 456 § 8.]

90.46.220 Permit. (1) Any person proposing to generate any type of reclaimed water for a use regulated under this chapter shall obtain a permit from the lead agency prior to distribution or use of that water. The permittee may then distribute and use the water, subject to the provisions in the permit. The permit must include provisions that protect human health and the environment. At a minimum, the permit must:

(a) Assure adequate and reliable treatment; and

(b) Govern the water quality, location, rate, and purpose of use.

(2) A permit under this chapter may be issued only to:

(a) A municipal, quasi-municipal, or other governmental entity;

(b) A private utility as defined in RCW 36.94.010;

(c) The holder of a waste disposal permit issued under chapter 90.48 RCW; or

(d) The owner of an agricultural processing facility that is generating agricultural industrial process water for agricultural use, or the owner of an industrial facility that is generating industrial process water for reuse.

(3) Before deciding whether to issue a permit under this section to a private utility, the lead agency may require information that is reasonable and necessary to determine whether the private utility has the financial and other resources to ensure the reliability, continuity, and supervision of the reclaimed water facility.

(4) Permits shall be issued for a fixed term specified by the rules adopted under RCW 90.46.015. A permittee shall apply for permit renewal prior to the end of the term. The rules adopted under RCW 90.46.015 shall specify the process of renewal, modification, change of ownership, suspension, and termination.

(5) The lead agency may deny an application for a permit or modify, suspend, or revoke a permit for good cause, including but not limited to, any case in which it finds that the permit was obtained by fraud or misrepresentation, or there is or has been a failure, refusal, or inability to comply with the requirements of this chapter or the rules adopted under this chapter.

(6) The lead agency shall provide for adequate public notice and opportunity for review and comment on all initial permit applications and renewal applications. Methods for providing notice may include electronic mail, posting on the lead agency's internet site, publication in a local newspaper, press releases, mailings, or other means of notification the lead agency determines appropriate. The lead agency shall also publicize notice of final permitting decisions.

(7) Any person aggrieved by a permitting decision has the right to an adjudicative proceeding. An adjudicative proceeding conducted under this subsection is governed by chapter 34.05 RCW. For any permit decision for which the department of ecology is the lead agency under this chapter, any appeal shall be in accordance with chapter 43.21B RCW. For any permit decision for which department of health is the lead agency under this chapter, any application for an adjudicative proceeding must be in writing, state the basis for contesting the action, include a copy of the decision, be served on and received by the department of health within twenty-eight days of receipt of notice of the final decision, and be served in a manner that shows proof of receipt.

(8) Permit requirements for the distribution and use of greywater will be established in rules adopted by the department of health under RCW 90.46.015. [2009 c 456 § 9.]

90.46.230 Right to enter and inspect property related to the purpose of the permit—Administrative search warrant. (1)(a) Except as otherwise provided in (b) of this subsection, the lead agency or its designee shall have the right to enter and inspect any property related to the purpose of the permit, public or private, at reasonable times with prior notification in order to determine compliance with laws and rules administered by the lead agency. During such inspections, the lead agency shall have free and unimpeded access to all data, facilities, and property involved in the generation, distribution, and use of reclaimed water.

(b) The lead agency or its designee need not give prior notification to enter property under (a) of this subsection if the purpose of the entry is to ensure compliance by the permittee with a prior order of the lead agency or if the lead agency or its designee has reasonable cause to believe there is a violation of the law that poses a serious threat to public health and safety or the environment.

(2) The lead agency or its designee may apply for an administrative search warrant to a court of competent jurisdiction and an administrative search warrant may issue where:

(a) The lead agency has attempted an inspection under this chapter and access has been actually or constructively denied; or

(b) There is reasonable cause to believe that a violation of this chapter or rules adopted under this chapter is occurring or has occurred. [2009 c 456 § 10.]

90.46.240 Plans, reports, specifications, and proposed methods of operation and maintenance to be submitted to departments. All required feasibility studies, planning documents, engineering reports, and plans and specifications for the construction of new reclaimed water, agricultural industrial process water, and industrial reuse water facilities, including generation, distribution, and use facilities, or for improvements or extensions to existing facilities, and the proposed method of future operation and maintenance of said facility or facilities, shall be submitted to and be approved by the lead agency, before construction thereof may begin. No approval shall be given until the lead agency is satisfied that the plans, reports, and specifications and the methods of operation and maintenance submitted are adequate to protect the quality of the water for the intended use as provided for in this chapter and are adequate to protect public health and safety as necessary. [2009 c 456 § 11.]

90.46.250 Violation of chapter—Notification—Immediate action. (1) When, in the opinion of the lead agency, a person violates or creates a substantial potential to violate this chapter, the lead agency shall notify the person of its determination by registered mail. The determination shall not constitute an appealable order or directive. Within thirty days from the receipt of notice of such determination, the person shall file with the lead agency a full report stating what steps have been and are being taken to comply with the determination of the lead agency. After the full report is filed or after the thirty days have elapsed, the lead agency may issue the order or directive as it deems appropriate under the circumstances, shall notify the person by registered mail, and shall inform the person of the process for requesting an adjudicative hearing.

(2) When it appears to the lead agency that water quality conditions or other conditions exist which require immediate action to protect human health and safety or the environment, the lead agency may issue a written order to the person or persons responsible without first issuing a notice of determination pursuant to subsection (1) of this section. An order or directive issued pursuant to this subsection shall be served by registered mail or personally upon any person to whom it is directed, and shall inform the person or persons responsible of the process for requesting an adjudicative hearing. [2009 c 456 § 12.]

90.46.260 Penalty. Any person found guilty of willfully violating any of the provisions of this chapter, or any final written orders or directive of the lead agency or a court in pursuance thereof, is guilty of a gross misdemeanor, and upon conviction thereof shall be punished by a fine of up to ten thousand dollars and costs of prosecution, or by imprisonment in the county jail for not more than one year, or both, in the discretion of the court. Each day upon which a willful violation of the provisions of this chapter occurs may be deemed a separate and additional violation. [2009 c 456 § 13.]

90.46.270 Violations—Civil penalty—Procedure. (1) Except as provided in RCW 43.05.060 through 43.05.080, 43.05.100, 43.05.110, and 43.05.150, any person who:

(a) Generates any reclaimed water for a use regulated under this chapter and distributes or uses that water without a permit;

(b) Violates the terms or conditions of a permit issued under this chapter; or

(c) Violates rules or orders adopted or issued pursuant to this chapter,

shall incur, in addition to any other penalty as provided by law, a penalty in an amount of up to ten thousand dollars per day for every violation. Each violation shall be a separate and distinct offense, and in case of a continuing violation, every day's continuance shall be a separate and distinct violation. Every act of commission or omission which procures, aids, or abets in the violation shall be considered a violation under the provisions of this section and subject to the penalty herein provided for. The penalty amount shall be set in consideration of the previous history of the violator and the severity of the violation's impact on public health, the environment, or both, in addition to other relevant factors.

(2) A penalty imposed by a final administrative order is due upon service of the final administrative order. A person who fails to pay a penalty assessed by a final administrative order within thirty days of service of the final administrative order shall pay, in addition to the amount of the penalty, interest at the rate of one percent of the unpaid balance of the assessed penalty for each month or part of a month that the penalty remains unpaid, commencing within the month in which the notice of penalty was served, and reasonable attorneys' fees as are incurred if civil enforcement of the final administrative order is required to collect penalty.

(3) A person who institutes proceedings for judicial review of a final administrative order assessing a civil penalty under this chapter shall place the full amount of the penalty in an interest bearing account in the registry of the reviewing court. At the conclusion of the proceeding the court shall, as appropriate, enter a judgment on behalf of the lead agency and order that the judgment be satisfied to the extent possible from moneys paid into the registry of the court or shall enter a judgment in favor of the person appealing the penalty assessment and order return of the moneys paid into the registry of the court together with accrued interest to the person appealing. The judgment may award reasonable attorneys' fees for the cost of the attorney general's office in representing the lead agency.

(4) If no appeal is taken from a final administrative order assessing a civil penalty under this chapter, the lead agency may file a certified copy of the final administrative order with the clerk of the superior court in which the person resides, or in Thurston county, and the clerk shall enter judgment in the name of the lead agency and in the amount of the penalty assessed in the final administrative order.

(5) When the penalty herein provided for is imposed by the department of ecology, it shall be imposed pursuant to the procedures set forth in RCW 43.21B.300. All penalties imposed by the department of ecology pursuant to RCW 43.21B.300 shall be deposited into the state treasury and credited to the general fund.

(6) When the penalty is imposed by the department of health, it shall be imposed pursuant to the procedures set forth in RCW 43.70.095. All receipts from penalties shall be deposited into the health reclaimed water account. The department of health shall use revenue derived from penalties only to provide training and technical assistance to reclaimed water system owners and operators. [2009 c 456 § 14.]

90.46.280 Application of administrative procedure act to chapter. The provisions of chapter 34.05 RCW, the administrative procedure act, apply to all rule-making and adjudicative proceedings authorized by or arising under the provisions of this chapter. [2009 c 456 § 15.]

Chapter 90.48 RCW
WATER POLLUTION CONTROL

Sections

90.48.465 Water discharge fees—Report to the legislature.
90.48.545 Storm water technical resource center—Duties—Advisory committee—Report to the legislature.
90.48.555 Construction and industrial storm water general permits—Effluent limitations—Report. *(Expires January 1, 2015.)*
90.48.605 Amending state water quality standards—Compliance schedules in excess of ten years authorized.

90.48.465 Water discharge fees—Report to the legislature. (1) The department shall establish fees to collect expenses for issuing and administering each class of permits under RCW 90.48.160, 90.48.162, and 90.48.260. An initial fee schedule shall be established by rule and be adjusted no more often than once every two years. This fee schedule shall apply to all permits, regardless of date of issuance, and fees shall be assessed prospectively. All fees charged shall be based on factors relating to the complexity of permit issuance and compliance and may be based on pollutant loading and toxicity and be designed to encourage recycling and the reduction of the quantity of pollutants. Fees shall be established in amounts to fully recover and not to exceed expenses incurred by the department in processing permit applications and modifications, monitoring and evaluating compliance with permits, conducting inspections, securing laboratory analysis of samples taken during inspections, reviewing plans and documents directly related to operations of permittees, overseeing performance of delegated pretreatment programs, and supporting the overhead expenses that are directly related to these activities.

(2) The annual fee paid by a municipality, as defined in 33 U.S.C. Sec. 1362, for all domestic wastewater facility permits issued under RCW 90.48.162 and 90.48.260 shall not exceed the total of a maximum of eighteen cents per month per residence or residential equivalent contributing to the municipality's wastewater system.

(3) The department shall ensure that indirect dischargers do not pay twice for the administrative expense of a permit. Accordingly, administrative expenses for permits issued by a municipality under RCW 90.48.165 are not recoverable by the department.

(4) In establishing fees, the department shall consider the economic impact of fees on small dischargers and the economic impact of fees on public entities required to obtain permits for storm water runoff and shall provide appropriate adjustments.

(5) The fee for an individual permit issued for a dairy farm as defined under chapter 90.64 RCW shall be fifty cents per animal unit up to one thousand two hundred fourteen dollars for fiscal year 1999. The fee for a general permit issued for a dairy farm as defined under chapter 90.64 RCW shall be fifty cents per animal unit up to eight hundred fifty dollars for fiscal year 1999. Thereafter, these fees may rise in accordance with the fiscal growth factor as provided in chapter 43.135 RCW.

(6) The fee for a general permit or an individual permit developed solely as a result of the federal court of appeals decision in *Headwaters, Inc. v. Talent Irrigation District*, 243 F.3rd 526 (9th Cir. 2001) is limited, until June 30, 2003, to a maximum of three hundred dollars. Such a permit is required only, and as long as, the interpretation of this court decision is not overturned or modified by future court rulings, administrative rule making, or clarification of scope by the United States environmental protection agency or legislative action. In such a case the department shall take appropriate action to rescind or modify these permits.

(7) All fees collected under this section shall be deposited in the water quality permit account hereby created in the state treasury. Moneys in the account may be appropriated only for purposes of administering permits under RCW 90.46.220, 90.48.160, 90.48.162, and 90.48.260.

(8) The department shall present a biennial progress report on the use of moneys from the account to the legislature. The report will be due December 31st of odd-numbered years. The report shall consist of information on fees collected, actual expenses incurred, and anticipated expenses for the current and following fiscal years. [2009 c 456 § 6; 2009 c 249 § 1; 2002 c 361 § 2; 1998 c 262 § 16; 1997 c 398 § 2;

1996 c 37 § 3; 1992 c 174 § 17; 1991 c 307 § 1; 1989 c 2 § 13 (Initiative Measure No. 97, approved November 8, 1988).]

Reviser's note: This section was amended by 2009 c 249 § 1 and by 2009 c 456 § 6, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Findings—Intent—2002 c 361: "The legislature finds that the recent federal court of appeals decision in *Headwaters, Inc. v. Talent Irrigation District*, 243 F.3rd 526 (9th Cir. 2001) imposes a duty to obtain a national pollutant discharge elimination system permit under the clean water act for the application of pesticides to irrigation canals. This duty is also extended to other individuals and organizations that apply pesticides to other waters, where no duty existed before the *Talent* decision.

The legislature finds that the costs associated with the issuance of the national pollutant discharge elimination system permit now required by the department of ecology as a result of the federal decision is burdensome to the affected individuals and organizations. The legislature intends to temporarily reduce the burden of the federal decision on those individuals and organizations." [2002 c 361 § 1.]

Effective date—2002 c 361: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 4, 2002]." [2002 c 361 § 3.]

Effective date—1998 c 262: See RCW 90.64.900.

Short title—Captions—Construction—Existing agreements—Effective date—Severability—1989 c 2: See RCW 70.105D.900 through 70.105D.921, respectively.

90.48.545 Storm water technical resource center—Duties—Advisory committee—Report to the legislature. (1) As funding to do so becomes available, the department shall create a storm water technical resource center in partnership with a university, nonprofit organization, or other public or private entity to provide tools for storm water management. The center shall use its authority to support the duties listed in this subsection through research, development, technology demonstration, technology transfer, education, outreach, recognition, and training programs. The center may:

(a) Review and evaluate emerging storm water technologies;

(b) Research and develop innovative and cost-effective technical solutions to remove pollutants from runoff and to reduce or eliminate storm water discharges;

(c) Conduct pilot projects to test technical solutions;

(d) Serve as a clearinghouse and outreach center for information on storm water technology;

(e) Assist in the development of storm water control methods to better protect water quality, including source control, product substitution, pollution prevention, and storm water treatment;

(f) Coordinate with federal, state, and local agencies and private organizations in administering programs related to storm water control measures; and

(g) Collaborate with existing storm water outreach programs.

(2) The department shall consult with an advisory committee in the development of the storm water technical resource center. The advisory committee must include representatives from relevant state agencies, local governments, the business community, the environmental community, tribes, and the building and development industry.

(3) The department, in consultation with the storm water technical resource center advisory committee, shall identify a funding strategy for funding the storm water technical resource center.

(4) The department shall encourage all interested parties to help and support the technical resource center with in-kind services.

(5) The department shall prepare and submit a biennial progress report to the legislature. [2009 c 449 § 2.]

90.48.555 Construction and industrial storm water general permits—Effluent limitations—Report. ***(Expires January 1, 2015.)*** The provisions of this section apply to the construction and industrial storm water general permits issued by the department pursuant to the federal clean water act, 33 U.S.C. Sec. 1251 et seq., and this chapter.

(1) Effluent limitations shall be included in construction and industrial storm water general permits as required under the federal clean water act, 33 U.S.C. Sec. 1251 et seq., and its implementing regulations. In accordance with federal clean water act requirements, pollutant specific, water quality-based effluent limitations shall be included in construction and industrial storm water general permits if there is a reasonable potential to cause or contribute to an excursion of a state water quality standard.

(2) Subject to the provisions of this section, both technology and water quality-based effluent limitations may be expressed as:

(a) Numeric effluent limitations;

(b) Narrative effluent limitations; or

(c) A combination of numeric and narrative effluent discharge limitations.

(3) The department must condition storm water general permits for industrial and construction activities issued under the national pollutant discharge elimination system of the federal clean water act to require compliance with numeric effluent discharge limits when such discharges are subject to:

(a) Numeric effluent limitations established in federally adopted, industry-specific effluent guidelines;

(b) State developed, industry-specific performance-based numeric effluent limitations;

(c) Numeric effluent limitations based on a completed total maximum daily load analysis or other pollution control measures; or

(d) A determination by the department that:

(i) The discharges covered under either the construction or industrial storm water general permits have a reasonable potential to cause or contribute to violation of state water quality standards; and

(ii) Effluent limitations based on nonnumeric best management practices are not effective in achieving compliance with state water quality standards.

(4) In making a determination under subsection (3)(d) of this section, the department shall use procedures that account for:

(a) Existing controls on point and nonpoint sources of pollution;

(b) The variability of the pollutant or pollutant parameter in the storm water discharge; and

(c) As appropriate, the dilution of the storm water in the receiving waters.

(5) Narrative effluent limitations requiring both the implementation of best management practices, when

designed to satisfy the technology and water quality-based requirements of the federal clean water act, 33 U.S.C. Sec. 1251 et seq., and compliance with water quality standards, shall be used for construction and industrial storm water general permits, unless the provisions of subsection (3) of this section apply.

(6) Compliance with water quality standards shall be presumed, unless discharge monitoring data or other site specific information demonstrates that a discharge causes or contributes to violation of water quality standards, when the permittee is:

(a) In full compliance with all permit conditions, including planning, sampling, monitoring, reporting, and record-keeping conditions; and

(b)(i) Fully implementing storm water best management practices contained in storm water technical manuals approved by the department, or practices that are demonstrably equivalent to practices contained in storm water technical manuals approved by the department, including the proper selection, implementation, and maintenance of all applicable and appropriate best management practices for on-site pollution control.

(ii) For the purposes of this section, "demonstrably equivalent" means that the technical basis for the selection of all storm water best management practices are documented within a storm water pollution prevention plan. The storm water pollution prevention plan must document:

(A) The method and reasons for choosing the storm water best management practices selected;

(B) The pollutant removal performance expected from the practices selected;

(C) The technical basis supporting the performance claims for the practices selected, including any available existing data concerning field performance of the practices selected;

(D) An assessment of how the selected practices will comply with state water quality standards; and

(E) An assessment of how the selected practices will satisfy both applicable federal technology-based treatment requirements and state requirements to use all known, available, and reasonable methods of prevention, control, and treatment.

(7)(a) By November 1, 2009, the department shall modify or reissue the industrial storm water general permit to require compliance with appropriately derived numeric water quality-based effluent limitations for existing discharges to water bodies listed as impaired according to 33 U.S.C. Sec. 1313(d) (Sec. 303(d) of the federal clean water act, 33 U.S.C. Sec. 1251 et seq.).

(b) The industrial storm water general permit must require permittees to comply with appropriately derived numeric water quality-based effluent limitations in the permit, as described in (a) of this subsection, by no later than six months after the effective date of the modified or reissued industrial storm water general permit.

(c) For permittees that the department determines are unable to comply with the numeric water quality-based effluent limitations required by (a) of this subsection, within the timeline established in (b) of this subsection, the department shall establish a compliance schedule as follows:

(i) Any compliance schedule provided by the department must require compliance as soon as possible, and must require compliance by no later than twenty-four months, or two complete wet seasons, after the effective date of the industrial storm water general permit. For purposes of this subsection (7)(c)(i), "wet seasons" means October 1st through June 30th.

(ii) The department shall post on its web site the name, location, industrial storm water permit number, and the reason for requesting a compliance schedule for each permittee who requests a compliance schedule according to this subsection (7)(c). The department shall post this information no later than thirty days after receiving a permittee's request for a compliance schedule under this subsection (7)(c). The department shall also prepare a list of organizations and individuals seeking to be notified when such requests for compliance schedules are made, and notify them within thirty days after receiving a permittee's request for a compliance schedule. Notification under this subsection may be accomplished electronically.

(d) The department shall report to the appropriate committees of the legislature specifying how the numeric effluent limitation in (a) of this subsection would be implemented. The report shall identify the number of dischargers to impaired water bodies and provide an assessment of anticipated compliance with the numeric effluent limitation established by (a) of this subsection.

(8)(a) Construction and industrial storm water general permits issued by the department shall include an enforceable adaptive management mechanism that includes appropriate monitoring, evaluation, and reporting. The adaptive management mechanism shall include elements designed to result in permit compliance and shall include, at a minimum, the following elements:

(i) An adaptive management indicator, such as monitoring benchmarks;

(ii) Monitoring;

(iii) Review and revisions to the storm water pollution prevention plan;

(iv) Documentation of remedial actions taken; and

(v) Reporting to the department.

(b) Construction and industrial storm water general permits issued by the department also shall include the timing and mechanisms for implementation of treatment best management practices.

(9) Construction and industrial storm water discharges authorized under general permits must not cause or have the reasonable potential to cause or contribute to a violation of an applicable water quality standard. Where a discharge has already been authorized under a national pollutant discharge elimination system storm water permit and it is later determined to cause or have the reasonable potential to cause or contribute to the violation of an applicable water quality standard, the department may notify the permittee of such a violation.

(10) Once notified by the department of a determination of reasonable potential to cause or contribute to the violation of an applicable water quality standard, the permittee must take all necessary actions to ensure future discharges do not cause or contribute to the violation of a water quality standard and document those actions in the storm water pollution pre-

vention plan and a report timely submitted to the department. If violations remain or recur, coverage under the construction or industrial storm water general permits may be terminated by the department, and an alternative general permit or individual permit may be issued. Compliance with the requirements of this subsection does not preclude any enforcement activity provided by the federal clean water act, 33 U.S.C. Sec. 1251 et seq., for the underlying violation.

(11) Receiving water sampling shall not be a requirement of an industrial or construction storm water general permit except to the extent that it can be conducted without endangering the health and safety of persons conducting the sampling.

(12) The department may authorize mixing zones only in compliance with and after making determinations mandated by the procedural and substantive requirements of applicable laws and regulations. [2009 c 449 § 1; 2004 c 225 § 2.]

Expiration date—2009 c 449 § 1: "Section 1 of this act expires January 1, 2015." [2009 c 449 § 3.]

Expiration date—2004 c 225: "This act expires January 1, 2015." [2004 c 225 § 7.]

Conflict with federal clean water act—2004 c 225 §§ 2 and 3: "If any portion of sections 2 and 3 of this act are found to be in conflict with the federal clean water act, that portion alone is void." [2004 c 225 § 6.]

Findings—2004 c 225: "(1) The legislature finds that the federal permit program under the federal clean water act, 33 U.S.C. Sec. 1251 et seq., and the state water pollution control laws provide numerous environmental and public health benefits to the citizens of Washington and to the state. The legislature also finds that failure to prevent and control pollution discharges, including those associated with storm water runoff, can degrade water quality and damage the environment, public health, and industries dependent on clean water such as shellfish production.

(2) The legislature finds the nature of storm water presents unique challenges and difficulties in meeting the permitting requirements under the federal clean water act, 33 U.S.C. Sec. 1251 et seq., including compliance with technology and water quality-based standards.

(3) The legislature finds that the federal clean water act, 33 U.S.C. Sec. 1251 et seq., requires certain larger construction sites and industrial facilities to obtain storm water permits under the national pollutant discharge elimination system permit program. The legislature also finds that under phase two of this program, smaller construction sites are also required to obtain storm water permits for their discharges.

(4) The legislature finds the department of ecology has been using general permits to permit categories of similar dischargers, including storm water associated with industrial and construction activities. The legislature also finds general permits must comply with all applicable requirements of the federal clean water act, 33 U.S.C. Sec. 1251 et seq., and the state water pollution control act including technology and water quality-based permitting requirements. The legislature further finds general permits may not always be the best solution for an individual discharger, especially when establishing water quality-based permitting requirements.

(5) The legislature finds that where sources within a specific category or subcategory of dischargers are subject to water quality-based limits imposed under the federal clean water act, 33 U.S.C. Sec. 1251 et seq., the sources in that specific category or subcategory must be subject to the same water quality-based limits.

(6) For this reason, the legislature encourages, to the extent allowed under existing state and federal law, an adaptive management approach to permitting storm water discharges.

(7) The legislature finds that storm water management must satisfy state and federal water quality requirements while also providing for flexibility in meeting such requirement to help ensure cost-effective storm water management.

(8) The legislature finds that the permitting of new and existing dischargers into waters listed under 33 U.S.C. Sec. 1313(d) (section 303(d) of the federal clean water act) presents specific challenges and is subject to additional permitting restrictions under the federal clean water act, 33 U.S.C. Sec. 1251 et seq.

(9) The legislature declares that general permits can be an effective and efficient permitting mechanism for permitting large numbers of similar dischargers.

(10) The legislature declares that an inspection and technical assistance program for industrial and construction storm water general permits is needed to ensure an effective permitting program. The legislature also declares that such a program should be fully funded to ensure its success." [2004 c 225 § 1.]

Report to legislature—2004 c 225: "No later than December 31, 2006, the department of ecology shall submit a report to the appropriate committees of the legislature regarding methods to improve the effectiveness of permit monitoring requirements in construction and industrial storm water general permits. The department of ecology shall study and evaluate how monitoring requirements could be improved to determine the effectiveness of storm water best management practices and compliance with state water quality standards. In this study the department also shall evaluate monitoring requirements that are necessary for determining compliance or noncompliance with state water quality standards and shall evaluate the feasibility of including such monitoring in future permits. When conducting this study, the department shall consult with experts in the fields of monitoring, storm water management, and water quality, and when necessary the department shall conduct field work to evaluate the practicality and usefulness of alternative monitoring proposals." [2004 c 225 § 4.]

90.48.605 Amending state water quality standards—Compliance schedules in excess of ten years authorized. The department shall amend the state water quality standards to authorize compliance schedules in excess of ten years for discharge permits issued under this chapter that implement allocations contained in a total maximum daily load under certain circumstances. Any such amendment must be submitted to the United States environmental protection agency under the clean water act. Compliance schedules for the permits may exceed ten years if the department determines that:

(1) The permittee is meeting its requirements under the total maximum daily load as soon as possible;

(2) The actions proposed in the compliance schedule are sufficient to achieve water quality standards as soon as possible;

(3) A compliance schedule is appropriate; and

(4) The permittee is not able to meet its waste load allocation solely by controlling and treating its own effluent. [2009 c 457 § 1.]

Chapter 90.56 RCW

OIL AND HAZARDOUS SUBSTANCE SPILL PREVENTION AND RESPONSE

Sections

90.56.500 Oil spill response account.

90.56.500 Oil spill response account. (1) The state oil spill response account is created in the state treasury. All receipts from RCW 82.23B.020(1) shall be deposited in the account. All costs reimbursed to the state by a responsible party or any other person for responding to a spill of oil shall also be deposited in the account. Moneys in the account shall be spent only after appropriation. The account is subject to allotment procedures under chapter 43.88 RCW.

(2) The account shall be used exclusively to pay for:

(a) The costs associated with the response to spills of crude oil or petroleum products into the navigable waters of the state; and

(b) The costs associated with the department's use of the emergency response towing vessel as described in RCW 88.46.135.

(3) Payment of response costs under subsection (2)(a) of this section shall be limited to spills which the director has determined are likely to exceed fifty thousand dollars.

(4) Before expending moneys from the account, the director shall make reasonable efforts to obtain funding for response costs under subsection (2) of this section from the person responsible for the spill and from other sources, including the federal government.

(5) Reimbursement for response costs shall be allowed only for costs which are not covered by funds appropriated to the agencies responsible for response activities. Costs associated with the response to spills of crude oil or petroleum products shall include:

(a) Natural resource damage assessment and related activities;

(b) Spill related response, containment, wildlife rescue, cleanup, disposal, and associated costs;

(c) Interagency coordination and public information related to a response; and

(d) Appropriate travel, goods and services, contracts, and equipment. [2009 c 11 § 9; 1991 c 200 § 805.]

Findings—Intent—Emergency response system—Apportionment of costs—Recommendations—Coordination with British Columbia—2009 c 11: See notes following RCW 88.46.130.

Chapter 90.58 RCW
SHORELINE MANAGEMENT ACT OF 1971

Sections

90.58.100 Programs as constituting use regulations—Duties when preparing programs and amendments thereto—Program contents.

90.58.185 Appeals involving single-family residences, involving penalties of fifteen thousand dollars or less, or other designated cases—Composition of board—Rules to expedite appeals.

90.58.580 Shoreline restoration projects—Relief from shoreline master program development standards and use regulations.

90.58.590 Local governments authorized to adopt moratoria—Requirements—Public hearing.

90.58.100 Programs as constituting use regulations—Duties when preparing programs and amendments thereto—Program contents. (1) The master programs provided for in this chapter, when adopted or approved by the department shall constitute use regulations for the various shorelines of the state. In preparing the master programs, and any amendments thereto, the department and local governments shall to the extent feasible:

(a) Utilize a systematic interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts;

(b) Consult with and obtain the comments of any federal, state, regional, or local agency having any special expertise with respect to any environmental impact;

(c) Consider all plans, studies, surveys, inventories, and systems of classification made or being made by federal, state, regional, or local agencies, by private individuals, or by organizations dealing with pertinent shorelines of the state;

(d) Conduct or support such further research, studies, surveys, and interviews as are deemed necessary;

(e) Utilize all available information regarding hydrology, geography, topography, ecology, economics, and other pertinent data;

(f) Employ, when feasible, all appropriate, modern scientific data processing and computer techniques to store, index, analyze, and manage the information gathered.

(2) The master programs shall include, when appropriate, the following:

(a) An economic development element for the location and design of industries, projects of statewide significance, transportation facilities, port facilities, tourist facilities, commerce and other developments that are particularly dependent on their location on or use of the shorelines of the state;

(b) A public access element making provision for public access to publicly owned areas;

(c) A recreational element for the preservation and enlargement of recreational opportunities, including but not limited to parks, tidelands, beaches, and recreational areas;

(d) A circulation element consisting of the general location and extent of existing and proposed major thoroughfares, transportation routes, terminals, and other public utilities and facilities, all correlated with the shoreline use element;

(e) A use element which considers the proposed general distribution and general location and extent of the use on shorelines and adjacent land areas for housing, business, industry, transportation, agriculture, natural resources, recreation, education, public buildings and grounds, and other categories of public and private uses of the land;

(f) A conservation element for the preservation of natural resources, including but not limited to scenic vistas, aesthetics, and vital estuarine areas for fisheries and wildlife protection;

(g) An historic, cultural, scientific, and educational element for the protection and restoration of buildings, sites, and areas having historic, cultural, scientific, or educational values;

(h) An element that gives consideration to the statewide interest in the prevention and minimization of flood damages; and

(i) Any other element deemed appropriate or necessary to effectuate the policy of this chapter.

(3) The master programs shall include such map or maps, descriptive text, diagrams and charts, or other descriptive material as are necessary to provide for ease of understanding.

(4) Master programs will reflect that state-owned shorelines of the state are particularly adapted to providing wilderness beaches, ecological study areas, and other recreational activities for the public and will give appropriate special consideration to same.

(5) Each master program shall contain provisions to allow for the varying of the application of use regulations of the program, including provisions for permits for conditional uses and variances, to insure that strict implementation of a program will not create unnecessary hardships or thwart the policy enumerated in RCW 90.58.020. Any such varying shall be allowed only if extraordinary circumstances are shown and the public interest suffers no substantial detrimental effect. The concept of this subsection shall be incorporated in the rules adopted by the department relating to the establishment of a permit system as provided in RCW 90.58.140(3).

(6) Each master program shall contain standards governing the protection of single family residences and appurtenant

structures against damage or loss due to shoreline erosion. The standards shall govern the issuance of substantial development permits for shoreline protection, including structural methods such as construction of bulkheads, and nonstructural methods of protection. The standards shall provide for methods which achieve effective and timely protection against loss or damage to single family residences and appurtenant structures due to shoreline erosion. The standards shall provide a preference for permit issuance for measures to protect single family residences occupied prior to January 1, 1992, where the proposed measure is designed to minimize harm to the shoreline natural environment. [2009 c 421 § 9; 1997 c 369 § 7; 1995 c 347 § 307; 1992 c 105 § 2; 1991 c 322 § 32; 1971 ex.s. c 286 § 10.]

Effective date—2009 c 421: See note following RCW 43.157.005.

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

Findings—Intent—1991 c 322: See note following RCW 86.12.200.

Industrial project of statewide significance—Defined: RCW 43.157.010.

90.58.185 Appeals involving single-family residences, involving penalties of fifteen thousand dollars or less, or other designated cases—Composition of board—Rules to expedite appeals. (1) In the case of an appeal involving a single-family residence or appurtenance to a single-family residence, including a dock or pier designed to serve a single-family residence, appeals involving a penalty of fifteen thousand dollars or less, or other cases designated by the chair of the hearings board, the request for review may be heard by a panel of three board members, at least one and not more than two of whom shall be members of the pollution control hearings board. Two members of the three must agree to issue a final decision of the board. In designating appeals for review by panels of three hearings board members, the chair shall consider factors such as the complexity and precedential nature of the case and the efficiency and cost-effectiveness of using a short board versus a full board.

(2) The board shall define by rule alternative processes to expedite appeals, including those involving a single-family residence or appurtenance to a single-family residence, including a dock or pier designed to serve a single-family residence, or involving a penalty of fifteen thousand dollars or less. These alternatives may include: Mediation, upon agreement of all parties; submission of testimony by affidavit; or other forms that may lead to less formal and faster resolution of appeals. [2009 c 422 § 1; 2005 c 34 § 1; 1994 c 253 § 2.]

90.58.580 Shoreline restoration projects—Relief from shoreline master program development standards and use regulations. (1) The local government may grant relief from shoreline master program development standards and use regulations within urban growth areas when the following apply:

(a) A shoreline restoration project causes or would cause a landward shift in the ordinary high water mark, resulting in the following:

(i)(A) Land that had not been regulated under this chapter prior to construction of the restoration project is brought under shoreline jurisdiction; or

(B) Additional regulatory requirements apply due to a landward shift in required shoreline buffers or other regulations of the applicable shoreline master program; and

(ii) Application of shoreline master program regulations would preclude or interfere with use of the property permitted by local development regulations, thus presenting a hardship to the project proponent;

(b) The proposed relief meets the following criteria:

(i) The proposed relief is the minimum necessary to relieve the hardship;

(ii) After granting the proposed relief, there is net environmental benefit from the restoration project;

(iii) Granting the proposed relief is consistent with the objectives of the shoreline restoration project and consistent with the shoreline master program; and

(iv) Where a shoreline restoration project is created as mitigation to obtain a development permit, the project proponent required to perform the mitigation is not eligible for relief under this section; and

(c) The application for relief must be submitted to the department for written approval or disapproval. This review must occur during the department's normal review of a shoreline substantial development permit, conditional use permit, or variance. If no such permit is required, then the department shall conduct its review when the local government provides a copy of a complete application and all supporting information necessary to conduct the review.

(i) Except as otherwise provided in subsection (2) of this section, the department shall provide at least twenty-days notice to parties that have indicated interest to the department in reviewing applications for relief under this section, and post the notice on their web site.

(ii) The department shall act within thirty calendar days of close of the public notice period, or within thirty days of receipt of the proposal from the local government if additional public notice is not required.

(2) The public notice requirements of subsection (1)(c) of this section do not apply if the relevant shoreline restoration project was included in a shoreline master program or shoreline restoration plan as defined in WAC 173-26-201, as follows:

(a) The restoration plan has been approved by the department under applicable shoreline master program guidelines;

(b) The shoreline restoration project is specifically identified in the shoreline master program or restoration plan or is located along a shoreline reach identified in the shoreline master program or restoration plan as appropriate for granting relief from shoreline regulations; and

(c) The shoreline master program or restoration plan includes policies addressing the nature of the relief and why, when, and how it would be applied.

(3) A substantial development permit is not required on land within urban growth areas as defined in RCW 36.70A.030 that is brought under shoreline jurisdiction due to a shoreline restoration project creating a landward shift in the ordinary high water mark.

(4) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Shoreline restoration project" means a project designed to restore impaired ecological function of a shoreline.

(b) "Urban growth areas" has the same meaning as defined in RCW 36.70A.030. [2009 c 405 § 2.]

Finding—Intent—2009 c 405: "The legislature finds that restoration of degraded shoreline conditions is important to the ecological function of our waters. However, restoration projects that shift the location of the shoreline can inadvertently create hardships for property owners, particularly in urban areas. Hardship may occur when a shoreline restoration project shifts shoreline management act regulations into areas that had not previously been regulated under the act or shifts the location of required shoreline buffers. The legislature intends to provide relief to property owners in such cases, while protecting the viability of shoreline restoration projects." [2009 c 405 § 1.]

90.58.590 Local governments authorized to adopt moratoria—Requirements—Public hearing. (1) Local governments may adopt moratoria or other interim official controls as necessary and appropriate to implement this chapter.

(2)(a) A local government adopting a moratorium or control under this section must:

(i) Hold a public hearing on the moratorium or control;

(ii) Adopt detailed findings of fact that include, but are not limited to justifications for the proposed or adopted actions and explanations of the desired and likely outcomes;

(iii) Notify the department of the moratorium or control immediately after its adoption. The notification must specify the time, place, and date of any public hearing required by this subsection;

(iv) Provide that all lawfully existing uses, structures, or other development shall continue to be deemed lawful conforming uses and may continue to be maintained, repaired, and redeveloped, so long as the use is not expanded, under the terms of the land use and shoreline rules and regulations in place at the time of the moratorium.

(b) The public hearing required by this section must be held within sixty days of the adoption of the moratorium or control.

(3) A moratorium or control adopted under this section may be effective for up to six months if a detailed work plan for remedying the issues and circumstances necessitating the moratorium or control is developed and made available for public review. A moratorium or control may be renewed for two six-month periods if the local government complies with subsection (2)(a) of this section before each renewal. If a moratorium or control is in effect on the date a proposed master program or amendment is submitted to the department, the moratorium or control must remain in effect until the department's final action under RCW 90.58.090; however, the moratorium expires six months after the date of submittal if the department has not taken final action.

(4) Nothing in this section may be construed to modify county and city moratoria powers conferred outside this chapter. [2009 c 444 § 2.]

Intent—2009 c 444: "The legislature recognizes that cities and counties have moratoria authority granted through constitutional and statutory provisions and that this authority, when properly exercised, is an important aspect of complying with environmental stewardship and protection requirements.

Recognizing the fundamental role and value of properly exercised moratoria, the legislature intends to establish new moratoria procedures and to affirm moratoria authority that local governments have and may exercise when implementing the shoreline management act, while recognizing the legitimate interests of existing shoreline-related developments during the period of interim moratoria." [2009 c 444 § 1.]

Chapter 90.64 RCW
DAIRY NUTRIENT MANAGEMENT

Sections

90.64.010 Definitions.
90.64.015 Repealed.
90.64.140 Repealed.
90.64.160 Repealed.
90.64.200 Inspecting and investigating conditions relating to the pollution of waters of the state—Access denied—Application for search warrant.

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

(1) "*Advisory and oversight committee" means a balanced committee of agency, dairy farm, and interest group representatives convened to provide oversight and direction to the dairy nutrient management program.

(2) "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

(3) "Catastrophic" means a tornado, hurricane, earthquake, flood, or other extreme condition that causes an overflow from a required waste retention structure.

(4) "Certification" means:

(a) The acknowledgment by a local conservation district that a dairy producer has constructed or otherwise put in place the elements necessary to implement his or her dairy nutrient management plan; and

(b) The acknowledgment by a dairy producer that he or she is managing dairy nutrients as specified in his or her approved dairy nutrient management plan.

(5) "Chronic" means a series of wet weather events that precludes the proper operation of a dairy nutrient management system that is designed for the current herd size.

(6) "Conservation commission" or "commission" means the conservation commission under chapter 89.08 RCW.

(7) "Conservation districts" or "district" means a subdivision of state government organized under chapter 89.08 RCW.

(8) "Concentrated dairy animal feeding operation" means a dairy animal feeding operation subject to regulation under this chapter which the director designates under RCW 90.64.020 or meets the following criteria:

(a) Has more than seven hundred mature dairy cows, whether milked or dry cows, that are confined; or

(b) Has more than two hundred head of mature dairy cattle, whether milked or dry cows, that are confined and either:

(i) From which pollutants are discharged into navigable waters through a manmade ditch, flushing system, or other similar manmade device; or

(ii) From which pollutants are discharged directly into surface or ground waters of the state that originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

(9) "Dairy animal feeding operation" means a lot or facility where the following conditions are met:

(a) Dairy animals that have been, are, or will be stabled or confined and fed for a total of forty-five days or more in any twelve-month period; and

(b) Crops, vegetation forage growth, or postharvest residues are not sustained in the normal growing season over any

portion of the lot or facility. Two or more dairy animal feeding operations under common ownership are considered, for the purposes of this chapter, to be a single dairy animal feeding operation if they adjoin each other or if they use a common area for land application of wastes.

(10) "Dairy farm" means any farm that is licensed to produce milk under chapter 15.36 RCW.

(11) "Dairy nutrient" means any organic waste produced by dairy cows or a dairy farm operation.

(12) "Dairy nutrient management plan" means a plan meeting the requirements established under RCW 90.64.026.

(13) "Dairy producer" means a person who owns or operates a dairy farm.

(14) "Department" means the department of ecology under chapter 43.21A RCW.

(15) "Director" means the director of the department of ecology, or his or her designee.

(16) "Upset" means an exceptional incident in which there is an unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the dairy. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(17) "Violation" means the following acts or omissions:

(a) A discharge of pollutants into the waters of the state, except those discharges that are due to a chronic or catastrophic event, or to an upset as provided in 40 C.F.R. Sec. 122.41, or to a bypass as provided in 40 C.F.R. Sec. 122.41, and that occur when:

(i) A dairy producer has a current national pollutant discharge elimination system permit with a wastewater system designed, operated, and maintained for the current herd size and that contains all process-generated wastewater plus average annual precipitation minus evaporation plus contaminated storm water runoff from a twenty-five year, twenty-four hour rainfall event for that specific location, and the dairy producer has complied with all permit conditions, including dairy nutrient management plan conditions for appropriate land application practices; or

(ii) A dairy producer does not have a national pollutant discharge elimination system permit, but has complied with all of the elements of a dairy nutrient management plan that: Prevents the discharge of pollutants to waters of the state, is commensurate with the dairy producer's current herd size, and is approved and certified under RCW 90.64.026;

(b) Failure to register as required under RCW 90.64.017;

(c)(i) Until July 1, 2011, failure to keep for a period of three years all records necessary to show that applications of nutrients to the land were within acceptable agronomic rates, unless otherwise required by law; and

(ii) Beginning July 1, 2011, failure to keep for a period of five years all records necessary to show that applications of nutrients to the land were within acceptable agronomic rates;

(d) The lack of an approved dairy nutrient management plan by July 1, 2002; or

(e) The lack of a certified dairy nutrient management plan for a dairy farm after December 31, 2003. [2009 c 143 § 2; 1998 c 262 § 2; 1993 c 221 § 2.]

***Reviser's note:** The dairy nutrient management program advisory and oversight committee was created in section 8, chapter 262, Laws of 1998, which was vetoed.

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

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

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

90.64.200 Inspecting and investigating conditions relating to the pollution of waters of the state—Access denied—Application for search warrant. The director of agriculture may enter at all reasonable times in or upon dairy farms for the purpose of inspecting and investigating conditions relating to the pollution of any waters of the state.

If the director of agriculture or the director's duly appointed agent is denied access to a dairy farm, he or she may apply to a court of competent jurisdiction for a search warrant authorizing access to the property and facilities at a reasonable time for purposes of conducting tests and inspections, taking samples, and examining records. To show that access is denied, the director of agriculture shall file with the court an affidavit or declarations containing a description of his or her attempts to notify and locate the owner or the owner's agent and to secure consent. Upon application, the court may issue a search warrant for the purposes requested. [2009 c 143 § 1.]

Chapter 90.71 RCW
PUGET SOUND WATER QUALITY PROTECTION

Sections

90.71.110 Puget Sound scientific research account.
90.71.280 Science panel—Duties.
90.71.370 Report to the governor and legislature—State of the Sound report—Review of programs.
90.71.410 Lake Whatcom phosphorus loading demonstration program.

90.71.110 Puget Sound scientific research account. The Puget Sound scientific research account is created in the state treasury. All gifts, grants, federal moneys, or appropriations made to the account must be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for research programs and projects selected pursuant to the process developed and overseen by the Puget Sound science panel as provided in RCW 90.71.280(1)(c). [2009 c 99 § 1; 2007 c 345 § 3.]

Findings—2007 c 345: "Although research about conditions in Puget Sound have been studied during the past several decades, the legislature finds that there is no coordinated, focused, comprehensive Puget Sound science program capable of setting research priorities for Puget Sound science. The legislature finds that environmental problems in Puget Sound are complex and that research is needed to provide information that can guide protective and restorative actions, and to explore and understand the impacts of a changing environment. The legislature also finds that there is no predictable funding process for Puget Sound research projects, including the aquatic rehabilitation zone one. The legislature declares that the state needs a process to focus the scientific effort on the Puget Sound ecosystem and to distribute research funds." [2007 c 345 § 1.]

90.71.280 Science panel—Duties. (1) The panel shall:

(a) Assist the council, board, and executive director in carrying out the obligations of the partnership, including preparing and updating the action agenda;

(b) As provided in RCW 90.71.290, assist the partnership in developing an ecosystem level strategic science program that:

(i) Addresses monitoring, modeling, data management, and research; and

(ii) Identifies science gaps and recommends research priorities;

(c) Develop and provide oversight of a competitive peer-reviewed process for soliciting, strategically prioritizing, and funding research and modeling projects;

(d) Develop and implement an appropriate process for peer review of monitoring, research, and modeling conducted as part of the strategic science program;

(e) Provide input to the executive director in developing biennial implementation strategies; and

(f) Offer an ecosystem-wide perspective on the science work being conducted in Puget Sound and by the partnership.

(2) The panel should collaborate with other scientific groups and consult other scientists in conducting its work. To the maximum extent possible, the panel should seek to integrate the state-sponsored Puget Sound science program with the Puget Sound science activities of federal agencies, including working toward an integrated research agenda and Puget Sound science work plan.

(3) By July 31, 2008, the panel shall identify environmental indicators measuring the health of Puget Sound, and recommend environmental benchmarks that need to be achieved to meet the goals of the action agenda. The council shall confer with the panel on incorporating the indicators and benchmarks into the action agenda. [2009 c 99 § 2; 2007 c 341 § 10.]

90.71.370 Report to the governor and legislature—State of the Sound report—Review of programs. (1) By December 1, 2008, and by September 1st of each even-numbered year beginning in 2010, the council shall provide to the governor and the appropriate fiscal committees of the senate and house of representatives its recommendations for the funding necessary to implement the action agenda in the succeeding biennium. The recommendations shall:

(a) Identify the funding needed by action agenda element;

(b) Address funding responsibilities among local, state, and federal governments, as well as nongovernmental funding; and

(c) Address funding needed to support the work of the partnership, the panel, the ecosystem work group, and entities assisting in coordinating local efforts to implement the plan.

(2) In the 2008 report required under subsection (1) of this section, the council shall include recommendations for projected funding needed through 2020 to implement the action agenda; funding needs for science panel staff; identify methods to secure stable and sufficient funding to meet these needs; and include proposals for new sources of funding to be dedicated to Puget Sound protection and recovery. In preparing the science panel staffing proposal, the council shall consult with the panel.

(3) By November 1st of each odd-numbered year beginning in 2009, the council shall produce a state of the Sound report that includes, at a minimum:

(a) An assessment of progress by state and nonstate entities in implementing the action agenda, including accomplishments in the use of state funds for action agenda implementation;

(b) A description of actions by implementing entities that are inconsistent with the action agenda and steps taken to remedy the inconsistency;

(c) The comments by the panel on progress in implementing the plan, as well as findings arising from the assessment and monitoring program;

(d) A review of citizen concerns provided to the partnership and the disposition of those concerns;

(e) A review of the expenditures of funds to state agencies for the implementation of programs affecting the protection and recovery of Puget Sound, and an assessment of whether the use of the funds is consistent with the action agenda; and

(f) An identification of all funds provided to the partnership, and recommendations as to how future state expenditures for all entities, including the partnership, could better match the priorities of the action agenda.

(4)(a) The council shall review state programs that fund facilities and activities that may contribute to action agenda implementation. By November 1, 2009, the council shall provide initial recommendations regarding program changes to the governor and appropriate fiscal and policy committees of the senate and house of representatives. By November 1, 2010, the council shall provide final recommendations regarding program changes, including proposed legislation to implement the recommendation, to the governor and appropriate fiscal and policy committees of the senate and house of representatives.

(b) The review in this subsection shall be conducted with the active assistance and collaboration of the agencies administering these programs, and in consultation with local governments and other entities receiving funding from these programs:

(i) Water pollution control facilities financing, chapter 70.146 RCW;

(ii) The water pollution control revolving fund, chapter 90.50A RCW;

(iii) The public works assistance account, chapter 43.155 RCW;

(iv) The aquatic lands enhancement account, RCW 79.105.150;

(v) The state toxics control account and local toxics control account and clean-up program, chapter 70.105D RCW;

(vi) The acquisition of habitat conservation and outdoor recreation land, chapter 79A.15 RCW;

(vii) The salmon recovery funding board, RCW 77.85.110 through 77.85.150;

(viii) The community economic revitalization board, chapter 43.160 RCW;

(ix) Other state financial assistance to water quality-related projects and activities; and

(x) Water quality financial assistance from federal programs administered through state programs or provided directly to local governments in the Puget Sound basin.

(c) The council's review shall include but not be limited to:

(i) Determining the level of funding and types of projects and activities funded through the programs that contribute to implementation of the action agenda;

(ii) Evaluating the procedures and criteria in each program for determining which projects and activities to fund, and their relationship to the goals and priorities of the action agenda;

(iii) Assessing methods for ensuring that the goals and priorities of the action agenda are given priority when program funding decisions are made regarding water quality-related projects and activities in the Puget Sound basin and habitat-related projects and activities in the Puget Sound basin;

(iv) Modifying funding criteria so that projects, programs, and activities that are inconsistent with the action agenda are ineligible for funding;

(v) Assessing ways to incorporate a strategic funding approach for the action agenda within the outcome-focused performance measures required by RCW 43.41.270 in administering natural resource-related and environmentally based grant and loan programs. [2009 c 479 § 74; 2008 c 329 § 927; 2007 c 341 § 19.]

Effective date—2009 c 479: See note following RCW 2.56.030.

Severability—Effective date—2008 c 329: See notes following RCW 28B.105.110.

90.71.410 Lake Whatcom phosphorus loading demonstration program. (1) The partnership shall assist the city of Bellingham and Whatcom county to implement a demonstration program regarding phosphorus loading into Lake Whatcom. The partnership shall assist the city and county to secure funding from federal and nongovernmental sources and work to secure funding commitments from the city and county as well. The demonstration program must be implemented by the city and the county and include elements for prevention, education, compliance, and monitoring to reduce to a minimum the introduction of phosphorus-bearing materials into Lake Whatcom. The partnership shall share the results of this program with other jurisdictions in Puget Sound seeking to reduce phosphorus loading.

(2) Any grant made under this section must be matched by at least an equal amount from nonstate sources. [2009 c 48 § 2.]

Findings—Intent—2009 c 48: "(1) The legislature finds that:

(a) The Puget Sound 2020 action agenda identifies water pollution as a primary threat to the health of Puget Sound and restoration of polluted waters as a top priority;

(b) Lake Whatcom is the drinking water reservoir for the city of Bellingham and the Lake Whatcom watershed provides fresh drinking water to one-half the population of Whatcom county;

(c) Whatcom creek flows out of Lake Whatcom and directly into Bellingham Bay which is the subject of a multiagency clean-up effort, the Bellingham Bay demonstration pilot project;

(d) The Puget Sound 2020 action agenda's area profile for Whatcom county identifies phosphorous pollution of Lake Whatcom as a key threat;

(e) Silver Beach creek is a major tributary to Lake Whatcom and its watershed is shared by the city of Bellingham and Whatcom county;

(f) Two decades of monitoring has shown that Silver Beach creek has some of the highest phosphorus loading of Lake Whatcom tributaries;

(g) Implementation of the recently completed watershed management plan and water cleanup plan for Lake Whatcom is identified as a priority strategy in the Puget Sound 2020 action agenda's priorities for Whatcom county; and

(h) Implementation of operations and management plans to manage on-site sewage systems around Lake Whatcom is identified as a key restoration strategy in Whatcom county.

(2) The legislature intends by this act to assist the city of Bellingham and Whatcom county in implementing a demonstration program to reduce phosphorus loading in the Lake Whatcom and Whatcom creek watershed and to share the lessons learned from this program with other jurisdictions in the Puget Sound basin working to reduce phosphorus loading." [2009 c 48 § 1.]

Chapter 90.82 RCW
WATERSHED PLANNING

Sections

90.82.060 Initiation of watershed planning—Scope of planning—Technical assistance from state agencies. *(Effective until June 30, 2019.)*

90.82.060 Initiation of watershed planning—Scope of planning—Technical assistance from state agencies. ***(Effective until June 30, 2019.)*** (1) Planning conducted under this chapter must provide for a process to allow the local citizens within a WRIA or multi-WRIA area to join together in an effort to: (a) Assess the status of the water resources of their WRIA or multi-WRIA area; and (b) determine how best to manage the water resources of the WRIA or multi-WRIA area to balance the competing resource demands for that area within the parameters under RCW 90.82.120.

(2)(a) Watershed planning under this chapter may be initiated for a WRIA only with the concurrence of: (i) All counties within the WRIA; (ii) the largest city or town within the WRIA unless the WRIA does not contain a city or town; and (iii) the water supply utility obtaining the largest quantity of water from the WRIA or, for a WRIA with lands within the Columbia Basin project, the water supply utility obtaining from the Columbia Basin project the largest quantity of water for the WRIA. To apply for a grant for organizing the planning unit as provided for under RCW 90.82.040(2)(a), these entities shall designate the entity that will serve as the lead agency for the planning effort and indicate how the planning unit will be staffed.

(b) For purposes of this chapter, WRIA 40 shall be divided such that the portion of the WRIA located entirely within the Stemilt and Squilchuck subbasins shall be considered WRIA 40a and the remaining portion shall be considered WRIA 40b. Planning may be conducted separately for WRIA 40a and 40b. WRIA 40a shall be eligible for one-fourth of the funding available for a single WRIA, and WRIA 40b shall be eligible for three-fourths of the funding available for a single WRIA.

(c) For purposes of this chapter, WRIA 29 shall be divided such that the portion of the WRIA located entirely within the White Salmon

subbasin and the subbasins east thereof shall be considered WRIA 29b and the remaining portion shall be considered WRIA 29a. Planning may be conducted separately for WRIA 29a and 29b. WRIA 29a shall be eligible for one-half of the funding available for a single WRIA and WRIA 29b shall be eligible for one-half of the funding available for a single WRIA.

(d) For purposes of this chapter, WRIA 14 shall be divided such that the portion of the WRIA where surface waters drain into Hood Canal shall be considered WRIA 14b, and the remaining portion shall be considered WRIA 14a. Planning for WRIA 14b under this chapter shall be conducted by the WRIA 16 planning unit. WRIA 14b shall be eligible for one-half of the funding available for a single WRIA, and WRIA 14a shall be eligible for one-half of the funding available for a single WRIA.

(3) Watershed planning under this chapter may be initiated for a multi-WRIA area only with the concurrence of: (a) All counties within the multi-WRIA area; (b) the largest city or town in each WRIA unless the WRIA does not contain a city or town; and (c) the water supply utility obtaining the largest quantity of water in each WRIA.

(4) If entities in subsection (2) or (3) of this section decide jointly and unanimously to proceed, they shall invite all tribes with reservation lands within the management area.

(5) The entities in subsection (2) or (3) of this section, including the tribes if they affirmatively accept the invitation, constitute the initiating governments for the purposes of this section.

(6) The organizing grant shall be used to organize the planning unit and to determine the scope of the planning to be conducted. In determining the scope of the planning activities, consideration shall be given to all existing plans and related planning activities. The scope of planning must include water quantity elements as provided in RCW 90.82.070, and may include water quality elements as contained in RCW 90.82.090, habitat elements as contained in RCW 90.82.100, and instream flow elements as contained in RCW 90.82.080. The initiating governments shall work with state government, other local governments within the management area, and affected tribal governments, in developing a planning process. The initiating governments may hold public meetings as deemed necessary to develop a proposed scope of work and a proposed composition of the planning unit. In developing a proposed composition of the planning unit, the initiating governments shall provide for representation of a wide range of water resource interests.

(7) Each state agency with regulatory or other interests in the WRIA or multi-WRIA area to be planned shall assist the local citizens in the planning effort to the greatest extent practicable, recognizing any fiscal limitations. In providing such technical assistance and to facilitate representation on the planning unit, state agencies may organize and agree upon their representation on the planning unit. Such technical assistance must only be at the request of and to the extent desired by the planning unit conducting such planning. The number of state agency representatives on the planning unit shall be determined by the initiating governments in consultation with the governor's office.

(8) As used in this section, "lead agency" means the entity that coordinates staff support of its own or of other local governments and receives grants for developing a watershed plan.

(9) A planning unit is dissolved when the department approves a water management board, as authorized in RCW 90.92.030, and all assets, funds, files, planning documents, pending plans and grant applications, and other current activities of the planning unit are transferred to the approved water management board. The approved water management board must assume the duties, responsibilities, and activities of the planning unit and the initiating governments, as required in this chapter. [2009 c 183 § 18; 2008 c 210 § 1; 2007 c 245 § 1; 2003 c 328 § 1; 2001 c 229 § 1; 1998 c 247 § 2.]

Expiration date—2009 c 183: See note following RCW 90.92.010.

Chapter 90.92 RCW
PILOT LOCAL WATER MANAGEMENT PROGRAM

Sections

90.92.010 Findings. *(Expires June 30, 2019.)*
90.92.020 Definitions. *(Expires June 30, 2019.)*
90.92.030 Establishing a water management board. *(Expires June 30, 2019.)*
90.92.040 Composition of board—Members' terms—Policy advisory group—Conflicts of interest. *(Expires June 30, 2019.)*
90.92.050 Board's authorities, duties, and responsibilities. *(Expires June 30, 2019.)*
90.92.060 Report to the legislature. *(Expires June 30, 2019.)*
90.92.070 Water banking. *(Expires June 30, 2019.)*
90.92.080 Local water plan—Board to adopt guidelines and criteria for filing, review, and approval—Annual reports--Term. *(Expires June 30, 2019.)*
90.92.090 Local water plan—Public notice period—Other requirements. *(Expires June 30, 2019.)*
90.92.100 Appeal—Review of a claim of impairment. *(Expires June 30, 2019.)*
90.92.110 Local water plan—Expiration—Making elements of the local water plan permanent. *(Expires June 30, 2019.)*
90.92.120 Local water plan—Status of water rights. *(Expires June 30, 2019.)*
90.92.130 Location of pilot program. *(Expires June 30, 2019.)*

90.92.010 Findings. ***(Expires June 30, 2019.)*** The legislature finds that the Walla Walla watershed community faces substantial challenges in planning for future water use and meeting the needs of fish, farms, and people. The legislature further finds that the participants in the Walla Walla watershed planning group have demonstrated exceptional cooperation in developing an innovative water management concept that enhances flexibility in water use while protecting ecological functions. The legislature also recognizes the significant contribution of representative William Grant's leadership in the creation of a Walla Walla pilot design to authorize local water management activity. [2009 c 183 § 1.]

Expiration date—2009 c 183: "This act expires June 30, 2019." [2009 c 183 § 20.]

90.92.020 Definitions. ***(Expires June 30, 2019.)*** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Basin" means the WRIA where the planning area is located.

(2) "Board" means a water management board created under this chapter.

(3) "Department" means the department of ecology.

(4) "Director" means the director of the department of ecology.

(5) "Initiating entities" means the county boards of commissioners within the planning area, the city council of the largest Washington city in the planning area, the largest water user in the planning area, and all affected federally recognized tribes within the planning area.

(6) "Instream flow" means a minimum flow under chapter 90.03 or 90.22 RCW or a base flow under chapter 90.54 RCW that has been set by rule.

(7) "Local water management program" means the water banking mechanism, any local water plans authorized by the board, and any other activities authorized by RCW 90.92.050.

(8) "Local water plan" means a voluntary water management plan developed by local water rights holders within the planning area to manage their water use in a manner that enhances stream flows in exchange for greater flexibility in exercising the water rights.

(9) "Planning area" means the entirety or a subsection of a single or multiple WRIA as identified in the creation of a board under this chapter.

(10) "Trust water right" means any water right acquired by the state under chapter 90.42 RCW for management in the state's water rights program.

(11) "Watershed plan" means a plan adopted under chapter 90.82 RCW.

(12) "WRIA" means a water resource inventory area established in chapter 173-500 WAC as it existed on January 1, 1997. [2009 c 183 § 2.]

Expiration date—2009 c 183: See note following RCW 90.92.010.

90.92.030 Establishing a water management board. ***(Expires June 30, 2019.)*** (1) Initiating entities may collectively petition the department in order to establish a water management board.

(2) The department, in consultation with the initiating entities, may create a board if:

(a) The initiating entities demonstrate to the department that the following criteria are satisfied:

(i) Community support for the development of a local watershed management plan, including the affected federally recognized tribes, local governments, and general community support;

(ii) There is commitment on the part of the initiating entities and the affected community to enhance stream flows for fish; and

(iii) An adequate monitoring network is in place, as determined by the department;

(b) The department determines the following:

(i) An instream flow rule for the WRIA or WRIAs in the planning area has been adopted since 1998;

(ii) The planning area is located within one of the sixteen fish-critical basins designated by the department in its March 2003 "Washington Water Acquisition Program" report and demonstrates a significant history of severely impaired flows; and

(iii) The watershed planning unit has completed a watershed implementation plan adopted under chapter 90.82 RCW and salmon recovery implementation plan adopted under chapter 77.85 RCW.

(3) The department, in determining whether to create a board, must give strong consideration to basins that have completed a judicial proceeding to adjudicate water rights under chapter 90.03 RCW. [2009 c 183 § 3.]

Expiration date—2009 c 183: See note following RCW 90.92.010.

90.92.040 Composition of board—Members' terms—Policy advisory group—Conflicts of interest. ***(Expires June 30, 2019.)*** (1)(a) Each board must be composed of the following members:

(i) All affected federally recognized tribes within the planning area will be invited to participate and may appoint one member each;

(ii) The following entities must each appoint one member:

(A) Each county board of commissioners within the planning area;

(B) The city council of the largest Washington city in the planning area; and

(C) The board of directors of the entity or the person who uses the greatest quantity of water in the planning area;

(iii) The conservation districts' board of supervisors in the planning area must jointly appoint one member; and

(iv) The members under (a)(i) through (iii) of this subsection must appoint the remaining three members of the board. These three members must be residents of the planning area. One member must be a planning area water rights holder. One member must represent environmental interests in the planning area. One member must be a citizen at large.

(b) If for any reason one of the required governments or entities to be represented on the board declines to participate, the remaining board members may invite another local government within the planning area to join the board.

(2) Each member of the board serves a two-year term and may be reappointed for an additional term. Members may continue to serve on the board until a new appointment is made.

(3) The board must create a policy advisory group and a water resource panel.

(a) For the policy advisory group, the board must invite participation from the department and the department of fish and wildlife, other affected state agencies, and other interests as appropriate. The board may also appoint members from local government agencies, academia, watershed and salmon recovery entities, businesses, and agricultural and environmental organizations as the board deems appropriate.

(b) The policy advisory group must assist and advise the board in coordinating and developing water resource-related programs, planning, and activities within the planning area, including the coordination of efforts with all jurisdictions of the planning area and development of the board's strategic actions.

(c) For the water resource panel, the board must appoint members to the water resource panel who have expertise and understanding regarding surface water and groundwater monitoring and hydrological analysis, irrigation management and engineering, water rights, and fisheries habitat and economic development. The board must invite participation from the department and the department of fish and wildlife.

(d) The water resource panel must provide technical assistance for the development of the local water plans and provide advice to the board on the criteria for establishment of local water plans and the approval, denial, or modification of the local water plans.

(4) A board member, employee, or contractor may not engage in any act that is in conflict with the proper discharge of their official duties. Such conflicts of interest include, but

are not limited to, holding a financial interest in a matter before the board. [2009 c 183 § 4.]

Expiration date—2009 c 183: See note following RCW 90.92.010.

90.92.050 Board's authorities, duties, and responsibilities. ***(Expires June 30, 2019.)*** (1) The board has the following authority, duties, and responsibilities:

(a) Assume the duties, responsibilities, and all current activities of the watershed planning unit and the initiating governments authorized in RCW 90.82.040;

(b) Develop strategic actions for the planning area by building on the watershed plan;

(c) Adopt and revise criteria, guidance, and processes to effectuate the purpose of this chapter;

(d) Administer the local water plan process;

(e) Oversee local water plan implementation;

(f) Manage banked water as authorized under this chapter;

(g) Acquire water rights by donation, purchase, or lease;

(h) Participate in local, state, tribal, federal, and multistate basin water planning initiatives and programs; and

(i) Enter into agreements with water rights holders to not divert water that becomes available as a result of local water plans, water banking activities, or other programs and projects endorsed by the board and the department.

(2) The board may acquire, purchase, hold, lease, manage, occupy, and sell real and personal property, including water rights, or any interest in water rights, enter into and perform all necessary contracts, appoint and employ necessary agents and employees, including an executive director and fix their compensation, employ contractors including contracts for professional services, and do all lawful acts required and expedient to carry out the purposes of this chapter.

(3) The board constitutes an independently funded entity, and may provide for its own funding as determined by the board. The board may solicit and accept grants, loans, and donations and may adopt fees for services it provides. The board may not impose taxes or acquire property, including water rights, by the exercise of eminent domain. The board may distribute available funds as grants or loans to local water plans or other water initiatives and projects that will further the goals of the board.

(4) The ability of the board to fully meet its duties under this chapter is dependent on the level of funding available to the board. If sufficient funding is not available to the board to carry out its duties, the board may, in consultation with the department, establish a plan that determines and sets priorities for implementation of the board's duties.

(5) The board, and its members and staff, acting in their official capacities, are immune from liability and are not subject to any cause of action or claim for damages arising from acts or omissions engaged in under this chapter.

(6) Upon the creation of the board, and for the duration of the board, the existing planning unit for the planning area, established under RCW 90.82.040, is dissolved and all assets, funds, files, planning documents, pending plans and grant applications, and other current activities of the planning unit are transferred to the board. [2009 c 183 § 5.]

Expiration date—2009 c 183: See note following RCW 90.92.010.

90.92.060 Report to the legislature. ***(Expires June 30, 2019.)*** The board, in collaboration with the department, must provide a written report to the legislature by December 1, 2012, December 1, 2015, and December 1, 2018. The report must summarize the actions, funding, and accomplishments of the board in the previous three years, and submit recommendations for improvement of the local water plan process. The 2018 report must also contain recommendations on the future of the board. [2009 c 183 § 6.]

Expiration date—2009 c 183: See note following RCW 90.92.010.

90.92.070 Water banking. ***(Expires June 30, 2019.)*** (1) The board may establish a mechanism to bank water for the holders of water rights within the planning area to voluntarily deposit them on a temporary or permanent basis.

(2) The board has the following authority regarding banked water in the planning area:

(a) The board may accept a surface water right or a groundwater right on a permanent or temporary basis under terms and conditions agreed upon by the water rights holder and the board.

(b) On a temporary or permanent basis, the board may accept a water right, or portion thereof, that will be made available under local water plans for stream flow enhancement under the terms of the local water plan, as provided in this chapter.

(c) Except as provided in (d) of this subsection, the board must accept a water right temporarily banked for instream flow without conducting a review of the extent and validity of the water right. Such a water right may not thereafter be authorized for any other purposes. A banked water right that has not been tentatively determined as to its extent and validity is not entitled to be protected from impairment by another water right.

(d) The board may manage a water right that has been banked as mitigation for impairment to instream flows and other existing water rights. However, the water right may only be available for mitigation to the extent the department determines the water right is valid and use of the water right for mitigation will not cause detriment or injury to existing water rights.

(3)(a) A water right banked on a temporary basis remains in the ownership of the water rights holder and not the state of Washington or the board.

(b) A water right banked on a permanent basis must be transferred to the state of Washington as a trust water right consistent with RCW 90.42.080.

(4) A water right or portion of a water right banked under this chapter is not subject to loss by forfeiture under RCW 90.14.130 through 90.14.200. When a temporary water right is withdrawn from banking, the time period that the water right was banked may not be calculated as time water was not used for purposes of RCW 90.14.160, 90.14.170, and 90.14.180.

(5) When a temporarily deposited water right is withdrawn from banking, the time period that the water right was banked may not be included in the five years of prior water use for purposes of applications to add acreage or purposes of water use under RCW 90.03.380(1).

(6) Nothing in this chapter forecloses or diminishes the rights of any person to apply to the department to transfer a

water right to the state trust water rights program under the authority of chapter 90.42 RCW or to apply for a change of a water right to the department or to a water conservancy board authorized under chapter 90.80 RCW. [2009 c 183 § 7.]

Expiration date—2009 c 183: See note following RCW 90.92.010.

90.92.080 Local water plan—Board to adopt guidelines and criteria for filing, review, and approval—Annual reports—Term. ***(Expires June 30, 2019.)*** (1) The board shall adopt guidelines and criteria for filing, review, and approval of a local water plan. The board shall also develop a dispute resolution process that provides for water users, the board, and the department to resolve disputes regarding the implementation and enforcement of a local water plan.

(2) A water user or group of water users within the planning area, organized as provided in guidelines adopted by the board, may submit a proposed local water plan to the board.

(3) A local water plan must include:

(a) A determination by the board of the baseline water use for all water rights involved in the local water plan, based on the guidelines adopted by the board, and in consultation with the water resource panel. The baseline documents regarding water use that are submitted by the water users may not be used by the department to determine the validity of the water rights in any future administrative or regulatory actions;

(b) A clearly defined set of practices that provide for flexibility of water use as defined in subsection (4) of this section;

(c) An estimate of the amount of water that would remain instream either long term or during critical flow periods for fish;

(d) Performance measures and options for achieving reductions in total water use from baseline;

(e) Performance measures for tracking improved stream flows either long term or during critical flow periods for fish; and

(f) Measurement, tracking, and monitoring measures and procedures that ensure the implementation and enforcement of the measures for flexibility of water use, enhancement of the stream flows, and other elements, terms, and conditions in the local water plan.

(4) The local water plan may have elements and provide rights to the use and application of water that are not otherwise authorized in the water rights, including:

(a) The ability to use the quantity of water defined as baseline in RCW 90.92.120(1)(a) on new or additional places of use, from new or additional points of diversion or withdrawal, and at different times of the year;

(b) The ability to change or add a source of water supply including the use of groundwater to supplement surface water rights and the ability to implement the conjunctive use of the groundwater and surface water; and

(c) The storage of water and infiltration of the water to the groundwater to supplement shallow groundwater withdrawals or for the purpose of replenishing the aquifer.

(5) To participate in a local water plan, water rights holders must: (a) Agree to allow a portion or all of their baseline water use to remain instream, as specified in the approved local water plan; (b) have existing operable water conveyance infrastructure in place and available for use; (c) agree that any water made available for stream flow enhancement may not be diverted from the water source and used during the term of the local water plan, but instead must be deposited into the water bank or, upon request by the water rights holder, transferred to the trust water rights program consistent with chapter 90.42 RCW; (d) measure and monitor their water use, stream flows upstream and downstream of the boundaries of the plan, and groundwater levels within the boundaries of the plan; and (e) commit to staying in the program consistent with criteria established by the board.

(6) Unless agreed upon by the water rights holder, nothing in this chapter diminishes or changes existing water rights.

(7) The water users must submit annual reports to the department and the board regarding contract performance, consistent with the guidelines adopted by the board.

(8) A local water plan may be effective for a term of one to ten years. [2009 c 183 § 8.]

Expiration date—2009 c 183: See note following RCW 90.92.010.

90.92.090 Local water plan—Public notice period—Other requirements. ***(Expires June 30, 2019.)*** (1) The board must provide a thirty-day public notice period for the proposal for a local water plan and accept comments from all interested persons during that period.

(2) To become effective, the local water plan must be approved by both the board and the department. A proposed local water plan must not be approved if the board and the department determine the local water plan will not substantially enhance instream flow conditions.

(3) The approved local water plan must be signed by the executive director of the board, by the director, and by all water users participating in the local water plan. The local water plan is a contract among the board, the department, and the water users in which all parties agree to abide by all terms and conditions of the local water plan.

(4) If an approved local water plan is not in compliance with its terms and conditions, the board shall, consistent with the dispute resolution process adopted by the board, seek compliance. If the board revokes a local water plan due to noncompliance, the water users in the local water plan must thereafter exercise the water rights only as the water rights were authorized and conditioned prior to the approval of the local water plan, and all rights and duties that were terms in the local water plan lapse and are not valid or enforceable. [2009 c 183 § 9.]

Expiration date—2009 c 183: See note following RCW 90.92.010.

90.92.100 Appeal—Review of a claim of impairment. ***(Expires June 30, 2019.)*** (1) Any person not party to the local water plan and aggrieved by the director's decision may appeal the decision to the pollution control hearings board as provided under RCW 43.21B.230.

(2) A water rights holder who believes the holder's water right has been impaired by any action under this chapter may request that the department review the impairment claim. If the department determines that some action under this chapter is impairing existing rights, the department, the board, and

the water users must amend the local water plan to eliminate the impairment. Any decision of the department to alter or not alter a local water plan is appealable to the pollution control hearings board under RCW 43.21B.230. [2009 c 183 § 10.]

Expiration date—2009 c 183: See note following RCW 90.92.010.

90.92.110 Local water plan—Expiration—Making elements of the local water plan permanent. ***(Expires June 30, 2019.)*** (1) A local water plan expires by its terms, by withdrawal of one or more water users to the local water plan, or upon agreement by all parties to the contact. Upon the expiration of a local water plan that has been operating for five or more years, the water users may request that the board and the department make the elements of the local water plan, including water deposited to the water bank for placement in the trust water rights program, permanent authorizations and conditions for use of the water rights.

(2) The request under subsection (1) of this section must be evaluated based on whether:

(a) The determination of the baseline water use adequately analyzed the extent and validity of the donated water right; and

(b)(i) Whether there is injury or detriment to other existing water rights; or

(ii) The written approval obtained from the holder of an impaired water right is continued or renewed.

(3) If the board and the department approve the request under subsection (1) of this section, the department shall issue superseding water rights consistent with the management and uses of the water under the local water plan. That portion of the water rights deposited in the water bank for placement in the trust water rights program must be made permanent and transferred in accordance with chapter 90.42 RCW.

(4) If the local water plan expires and the water management and uses under the local water plan are not granted approval to be permanent, the water users in the local water plan must thereafter exercise the water rights only as the water rights were authorized and conditioned prior to the local water plan, and all rights and duties that were terms in the local water plan lapse and are not valid or enforceable. [2009 c 183 § 11.]

Expiration date—2009 c 183: See note following RCW 90.92.010.

90.92.120 Local water plan—Status of water rights. ***(Expires June 30, 2019.)*** (1) The water rights in the local water plan as authorized for the uses described in RCW 90.92.080(4) are:

(a) Not subject to either the approval of the department under RCW 90.03.380 through 90.03.390, 90.44.100, and 90.44.105, or a tentative determination of the validity and extent of the water rights;

(b) Not subject to loss by forfeiture under RCW 90.14.130 through 90.14.200 during the period of time from when the local water plan is approved to the expiration or nullification of the local water plan as provided in RCW 90.92.110; and

(c) Not to be exercised in a manner that would result in injury or detriment to other existing water rights unless express written approval is obtained from the holder of the impaired water right. To allow impacts to existing instream flow rights, the board and the department must agree that the flow benefits provided by a local water plan outweigh the impacts on existing instream flow rights.

(2) The years during the period of time when the local water plan is operational may not be considered or calculated as a period of time that the water was not applied to use for purposes of RCW 90.14.130 through 90.14.200. Further, the years during this period of time may not be considered or calculated as a period of time that the water was not applied to use and for purposes of future applications to change the water right for additional purposes or acreage under RCW 90.03.380. [2009 c 183 § 12.]

Expiration date—2009 c 183: See note following RCW 90.92.010.

90.92.130 Location of pilot program. ***(Expires June 30, 2019.)*** The local water management program authorized by this chapter must be piloted in WRIA 32, as defined in chapter 173-500 WAC as it existed on January 1, 1997. [2009 c 183 § 13.]

Expiration date—2009 c 183: See note following RCW 90.92.010.

Title 91

WATERWAYS

Chapters

91.08 Public waterways.

Chapter 91.08 RCW

PUBLIC WATERWAYS

Sections

91.08.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. *(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*

91.08.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. ***(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 199.]